CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

Bureau of Customs and Border Protection

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 37 **APRIL 2, 2003** **NO. 14**

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

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Bureau of Customs and Border Protection

Treasury Decisions

19 CFR Part 4

(T.D. 03–11)

RIN 1515–AD25

COMPLIANCE WITH INFLATION ADJUSTMENT ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, (the Act), each Federal agency is required to adjust for inflation any civil monetary penalty covered by the Act that may be assessed in connection with violations of those statutes that the agency administers. While civil monetary penalties assessed by Customs under any provisions of the Tariff Act of 1930 are specifically exempted from the Act, Customs does administer two statutory provisions which provide for the assessment of civil monetary penalties that are covered by the Act. One statute concerns the transportation of passengers between ports or places in the United States; the other concerns the coastwise towing of vessels. The amount of the penalty that may be assessed for violations incurred under those statutes needs to be adjusted for inflation. Accordingly, Customs is amending its regulations in order to adjust the covered penalty amounts for inflation in compliance with the provisions of the Act.

EFFECTIVE DATE: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202–572–8750).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Federal Civil Penalties Inflation Adjustment Act of 1990 (hereinafter, the Act), which is codified at 28 U.S.C. 2461 note, and which was

amended in 1996 by the Debt Collection Improvement Act (Public Law 104–134, Section 31001(s); 110 Stat. 1321–373), provides that each Federal agency must adjust for inflation any civil monetary penalties covered by the Act that are assessed in connection with violations that are incurred under those statutes that the agency administers. To this end, pursuant to the Act, as amended by the Debt Collection Improvement Act, the responsible Federal agency was required, by October 23, 1996, to make an initial inflationary adjustment to any civil monetary penalty covered by the Act; and each agency was then required to make these necessary inflationary adjustments at least once every 4 years thereafter.

The Act expressly exempts from its coverage any penalties that Customs may assess for violations that are incurred under any provision of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*). However, Customs does administer two statutes that are subject to the Act; and the penalties that Customs may assess for violations of these statutes have not previously been adjusted for inflation as required by the Act.

Specifically, the two statutes administered by Customs that are subject to the Act are 46 U.S.C. App. 289 and 46 U.S.C. App. 316(a). Section 289 prohibits foreign vessels from transporting passengers between ports or places in the United States; the penalty assessed under 46 U.S.C. App. 289 is $200 for every passenger transported in violation of the statute (§ 4.80(b)(2), Customs Regulations (19 CFR 4.80(b)(2))). Section 316(a) prohibits certain vessels from towing any vessel, other than a vessel in distress, between ports or places in the United States embraced within the coastwise laws; the penalties assessed for violations of 46 U.S.C. App. 316(a) are a minimum of $250 to a maximum of $1,000 per violation, plus $50 per ton on the measurement of every vessel towed in violation of the statute (§ 4.92, Customs Regulations (19 CFR 4.92)).

Section 5 of the Act (28 U.S.C. 2461 note, Section 5) provides that civil monetary penalties must be adjusted based upon the cost of living, either by increasing the maximum civil monetary penalty or by increasing the range of minimum and maximum penalties for each civil monetary penalty, as appropriate. Any increase determined under section 5 of the Act is to be rounded to the nearest multiple of $10 in the case of penalties less than or equal to $100, and multiples of $100 in the case of penalties greater than $100 or less than or equal to $1,000.

In calculating the specific amount of the adjustment to any civil monetary penalty covered by the Act, section 5 required that the first such adjustment, which was to be made by October 23, 1996, could not exceed 10 percent of the penalty. Thereafter, in determining the proper adjustment to any civil monetary penalty covered by the Act, section 5 provides for a cost-of-living adjustment that would be determined based on the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI

for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Hence, consistent with the provisions of Section 5 of the Act, as described, the civil penalty for violating 46 U.S.C. App. 289 is adjusted to $300 for every passenger transported in violation of the statute; and the civil penalties for violating 46 U.S.C. App. 316(a) are adjusted to a minimum of $350 and a maximum of $1,100, plus $60 per ton on the measurement of every vessel towed in violation of the statute.

Accordingly, this document amends §§ 4.80 and 4.92 of the Customs Regulations (19 CFR 4.80 and 4.92) in order to make the necessary inflation-induced adjustments to the penalties assessed for violations that are incurred under 46 U.S.C. App. 289 and 46 U.S.C. App. 316(a), as mandated by the Act. Furthermore, the specific authority citations for §§ 4.80 and 4.92 are revised to add a reference to the codification of the Act at 28 U.S.C. 2461 note.

ADMINISTRATIVE PROCEDURE ACT, THE REGULATORY FLEXIBILITY ACT, AND EXECUTIVE ORDER 12866

This final rule merely brings the Customs Regulations into conformance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. As such, pursuant to 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), prior notice and public procedure are unnecessary in this case, and, pursuant to 5 U.S.C. 553(d)(3) of the APA, a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

LIST OF SUBJECTS IN 19 CFR PART 4

Administrative practice and procedure, Coastal zone, Inspection, Passenger vessels, Penalties, Reporting and recordkeeping requirements, Vessels.

AMENDMENTS TO THE REGULATIONS

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues, and the specific authority citations for §§ 4.80 and 4.92 are revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1624; 46 U.S.C. App. 3, 91;

* * * * * * *

Section 4.80 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 12106; 46 U.S.C. App. 251, 289, 319, 802, 808, 883, 883–1;

* * * * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. App. 316(a);

* * * * * * *

2. Section 4.80 is amended by revising paragraph (b)(2) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * * * *

(b) *Penalties for violating coastwise laws.* * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed (46 U.S.C. App. 289, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

* * * * * * *

3. Section 4.92 is amended by revising its second sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this provision are a fine of from $350 to $1100 against the owner or master of the towing vessel and a further penalty against the towing vessel of $60 per ton of the towed vessel (46 U.S.C. App. 316(a), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 25, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 21, 2003 (68 FR 13819)]

19 CFR Part 10

(T.D. 03–12)

RIN 1515–AD22

TRADE BENEFITS UNDER THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that implement the trade benefits for Caribbean Basin countries contained in section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA). The interim regulatory amendments involve the textile and apparel provisions of section 213(b) and in part reflect changes made to those statutory provisions by section 3107 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the amendment of several provisions to clarify the status of apparel articles assembled from knit-to-shape components, the addition of language requiring any dyeing, printing, and finishing of certain fabrics to be done in the United States, the inclusion of exception language in the brassieres provision regarding articles entered under other CBERA apparel provisions, the addition of a provision permitting the dyeing, printing, and finishing of thread in the Caribbean region, and the addition of a new provision to cover additional production scenarios involving the United States and the Caribbean region. This document also includes a number of other changes to the CBERA textile and apparel implementing regulations to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective March 21, 2003; comments must be submitted by May 20, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Robert Abels, Office of Field Operations (202–927–1959).

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Textile and Apparel Articles Under The Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute, codified at 19 U.S.C. 2701–2707) instituted a duty preference program that applies to exports of goods from those Caribbean Basin countries that have been designated by the President as program beneficiaries. On May 18, 2000, the President signed into law the Trade and Development Act of 2000, Public Law 106–200, 114 Stat. 251, which included as Title II the United States-Caribbean Basin Trade Partnership Act, or CBTPA. The CBTPA provisions included section 211 which amended section 213(b) of the CBERA (19 U.S.C. 2703(b)) in order to, among other things, provide in new paragraph (2) for the preferential treatment of certain textile and apparel articles, specified in subparagraph (A), that had previously been excluded from the CBI duty-free program. The preferential treatment for those textile and apparel articles under paragraph (2)(A) of section 213(b) involves not only duty-free treatment but also entry in the United States free of quantitative restrictions, limitations, or consultation levels.

Sections 10.221 through 10.227 of the Customs Regulations (19 CFR 10.221 through 10.227) set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment of textile and apparel articles pursuant to the provisions added to section 213(b) by the CBTPA. Those regulations were adopted on an interim basis in T.D. 00–68, published in the Federal Register (65 FR 59650) on October 5, 2000, and took effect on October 1, 2000. Action to adopt those interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions.

Trade Act of 2002 amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Public Law 107–210, 116 Stat. 933. Section 3107(a) of the Act made a number of changes to the textile and apparel provisions of paragraph (2)(A) of section 213(b) of the CBERA. The amendments made by section 3107(a) of the Act were as follows:

1. The article description in the introductory text of paragraph (2)(A)(i) was amended to refer to apparel articles "sewn or otherwise" assembled and to include a reference to articles assembled "from components knit-to-shape." The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or

5603 of the HTS and are wholly formed and cut in the United States) that are * * *.

2. At the end of paragraph (2)(A)(i), two new sentences were added to provide that apparel articles entered on or after September 1, 2002, will qualify for preferential treatment under paragraph (2)(A)(i) only if, in the case of knit fabrics and woven fabrics, all dyeing, printing, and finishing of the fabrics from which the articles are assembled is carried out in the United States. This dyeing, printing, and finishing provision, which applies equally to the articles covered by paragraph (2)(A)(i)(I) and to the articles covered by paragraph (2)(A)(i)(II), reads as follows:

> Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

3. The article description in paragraph (2)(A)(ii) was reorganized in order to accommodate the addition of references to apparel articles "sewn or otherwise" assembled and to apparel articles assembled "from components knit-to-shape in the United States from yarns wholly formed in the United States." In addition, the same dyeing, printing, and finishing language described above was added at the end of this paragraph. The amended paragraph (2)(A)(ii) text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS and are wholly formed in the United States). Apparel articles entered on or after September 1, 2002, shall qualify under the preceding sentence only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles entered on or after September 1, 2002, shall qualify under the first sentence of this clause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States.

4. The quantitative limitation provisions for knit apparel set forth in paragraphs (2)(A)(iii)(II) and (2)(A)(iii)(IV) were revised. These statutory changes do not affect the regulatory provisions and therefore are not dealt with in this document.

5. In paragraph (2)(A)(iv) which covers brassieres, subclause (I) was amended by the addition of exception language regarding articles cov-

ered by certain other clauses under paragraph (2)(A). In addition, subclauses (II) and (III), which set forth 75 and 85 percent U.S. fabric content requirements that apply to articles described in subclause (I) beginning on October 1, 2001, were amended by replacing each reference to "fabric components" with "fabrics," by adding exclusion language regarding findings and trimmings after each reference to fabric(s), and by adding various references to articles that are "entered" and that are "eligible" under clause (iv). Since the subclause (II) and (III) provisions were not dealt with in T.D. 00–68 but rather were the subject of a separate interim rule document (see T.D. 01–74 published in the Federal Register at 66 FR 50534 on October 4, 2001), the changes which section 3107(a) of the Act made to those provisions similarly will be dealt with in a separate rulemaking procedure. Accordingly, this document addresses only that portion of paragraph (2)(A)(iv) text that was dealt with in T.D. 00–68, that is, subclause (I) which, as amended by section 3107(a) of the Act, reads as follows:

> Subject to subclause (II), any apparel article classifiable under subheading 6212.10 of the HTS, except for articles entered under clause (i), (ii), (iii), (v), or (vi), if the article is both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both.

6. In paragraph (2)(A)(vii) which consists of multiple subclauses setting forth special rules regarding the treatment of certain fibers, yarns, materials or components for purposes of preferential treatment, a new subclause (V) was added to clarify the status of dyed, printed, or finished thread. This new provision reads as follows:

> An article otherwise eligible for preferential treatment under this paragraph shall not be ineligible for such treatment because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

7. Finally, a new clause (ix) was added to paragraph (2)(A) to cover hybrid operations, that is, combinations of various production scenarios described in other clauses under paragraph (2)(A). This new provision, which also incorporates the new dyeing, printing, and finishing language, reads as follows:

> Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the HTS). Apparel articles shall qualify under this clause only if they meet the requirements of clause (i) or (ii) (as the case may be) with respect to dyeing, printing, and finishing of knit and woven fabrics from which the articles are assembled.

On November 13, 2002, the President signed Proclamation 7626 (published in the Federal Register at 67 FR 69459 on November 18, 2002) which, among other things, in Annex I sets forth modifications to the HTSUS to implement the changes to section 213(b)(2)(A) of the CBERA made by section 3107(a) of the Act. The Proclamation provides that the HTSUS modifications that implement the changes made by section 3107(a) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, except that (1) the provisions of Annex I relating to the dyeing, printing, and finishing of fabrics are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2002, and (2) the provisions of Annex I relating to the new quantitative limits for certain knit apparel and relating to the CBTPA brassieres provision are effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

On December 31, 2002, the Office of the United States Trade Representative (USTR) published a notice in the Federal Register (67 FR 79954) setting forth technical corrections to the HTSUS to address several inadvertent errors and omissions in various Presidential Proclamations. With regard to Proclamation 7626, this notice made the following two changes to the article description in subheading 9820.11.18, HTSUS: (1) removal of the parenthetical exception reference regarding non-underwear t-shirts, effective on or after October 2, 2000; and (2) insertion of the words ", or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both" after the phrase "from yarns wholly formed in the United States," effective on or after August 6, 2002.

Changes to the interim regulatory texts

As a consequence of the statutory changes described above and as a result of the modifications to the HTSUS made by Proclamation 7626 and by the December 31, 2002, USTR notice, the interim CBTPA implementing regulations published in T.D. 00–68 no longer fully reflect the current state of the law. In addition, following publication of those interim regulations, a number of other issues came to the attention of Customs that warrant clarification in the CBTPA implementing regulations. Accordingly, this document sets forth interim amendments to the CBTPA implementing regulations, with provision for public comment on those changes, to reflect the amendments to the statute mentioned above and to clarify or otherwise improve those previously published regulations. It is the intention of Customs, after the close of the public comment period prescribed in this document, to publish one document that (1) addresses both the comments submitted on the interim regulations published in T.D. 00–68 and the comments submitted on the interim regulations set forth in this document and (2) adopts, as a final rule, the CBTPA implementing regulations contained in the two interim rule documents with any additional changes as may be ap-

propriate based on issues raised in the submitted public comments. The interim regulatory changes contained in this document are discussed below.

Amendments to reflect the statutory changes

The interim regulatory amendments set forth in this document that are in response to the statutory changes made to section 213(b) of the CBERA by section 3107(a) of the Act are as follows:

1. In § 10.223, paragraphs (a)(1) and (a)(2) are revised to conform to the amendment of the product description in the introductory text of paragraph (2)(A)(i) of the statute. The amended regulatory text in each case includes a cross-reference to new paragraph (b), discussed below, which addresses, among other things, the new statutory provision regarding dyeing, printing, and finishing of fabrics.

2. In § 10.223, paragraph (a)(3) is revised to conform to the amendment of the product description in paragraph (2)(A)(ii) of the statute. The amended regulatory text also includes a cross-reference to new paragraph (b), discussed below, which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

3. In § 10.223, paragraph (a)(6) is revised to conform to the amendment of the description of brassieres contained in subclause (I) of paragraph (2)(A)(iv) of the statute.

4. In § 10.223, paragraph (a)(12), which corresponds to subheading 9820.11.18, HTSUS, is revised in order to (1) reflect the HTSUS changes made in the December 31, 2002, USTR notice discussed above and (2) include a cross-reference to new paragraph (b), discussed below, which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

5. In § 10.223, a new paragraph (a)(13) is added to cover the hybrid operations described in new clause (ix) of paragraph (2)(A) of the statute. This new provision also includes a cross-reference to new paragraph (b) which addresses the new statutory provision regarding dyeing, printing, and finishing of fabrics.

6. In § 10.223, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) and a new paragraph (b) is added primarily to address the issue of dyeing, printing, and finishing of fabrics. The following points are noted regarding this new paragraph (b) text:

a. Customs believes that it is preferable to set forth the basic statutory dyeing, printing, and finishing rule in one place in the regulations rather than repeat it in each of the article description contexts to which the rule relates. Customs notes that this is similar to the approach taken for HTSUS purposes in Annex I to Proclamation 7626 referred to above.

b. As regards the structure of paragraph (b), it is divided into two parts. Paragraph (b)(1) covers dyeing, printing, and finishing operations and consists of a general statement followed by two specific limitations, the first one of which addresses the statutory rule adopted in the Trade Act of 2002. Paragraph (b)(2) covers post-assembly and other operations (for example, embroidering, stone-washing, perma-pressing,

garment-dyeing) and consists of a general statement followed by one specific limitation.

c. The general statements regarding dyeing, printing, and finishing operations in paragraph (b)(1) and regarding other operations in paragraph (b)(2) are specifically intended to clarify the status of those operations under the CBTPA program when applied to yarns, fabrics, components and articles in those contexts that are not directly addressed in the statutory texts. The general statement in each case provides that the operations in question may be performed on any yarn or fabric or component, or on any article, without affecting the eligibility of an article for preferential treatment, provided that the dyeing, printing, finishing, or other operation is performed only in the United States or in a CBTPA beneficiary country. Customs believes that limiting those processes to the United States and CBTPA beneficiary countries is consistent with the overall objective of the CBTPA program. Customs notes in this regard that the Conference Report relating to the CBTPA legislation (House Report 106–606, 106th Congress, 2d Session) states the conferees' intent to foster increased opportunities for U.S. textile and apparel companies to expand co-production arrangements with CBTPA beneficiary countries. Moreover, the findings of Congress in section 202 of the Trade and Development Act of 2000 specifically referred to the offering of benefits to Caribbean Basin countries to "promote the growth of free enterprise and economic opportunity in those neighboring countries." Those findings also stated that "increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities."

d. The dyeing, printing, and finishing provision of paragraph (b)(1)(i) corresponds to the statutory provision and therefore refers specifically to articles described in paragraphs (a)(1), (a)(2), (a)(3), (a)(12), and (a)(13) of § 10.223. However, the regulatory text refers to knitted "or crocheted" fabrics, in order to reflect the terminology employed in Annex I to Proclamation 7626. In addition, this regulatory text includes a reference to a fabric component "produced from fabric" in order to (1) reflect the fact that apparel articles are most often assembled from apparel components rather than from fabrics and (2) clarify the Customs position that knitting to shape does not create a fabric but rather results in the creation of a component that is ready for assembly without having gone through a fabric stage.

e. The second provision under the general rule regarding dyeing, printing, and finishing operations, set forth in paragraph (b)(1)(ii), reflects the principle that in the case of assembled articles described in paragraph (a)(1), and in the case of assembled luggage described in paragraph (a)(10), an operation that is incidental to the assembly process may be performed in a CBTPA beneficiary country. This provision reflects the terms of subheading 9802.00.80, HTSUS, and the regulations

under that HTSUS provision which include, in 19 CFR 10.16(c), a list of operations not considered incidental to assembly.

f. The statement in the last sentence of paragraph (b)(2) regarding other operations is included for the same reason stated at point e. above in connection with paragraph (b)(1) concerning operations incidental to assembly under subheading 9802.00.80, HTSUS.

7. In § 10.223, a new subparagraph (3) is added at the end of redesignated paragraph (c) to cover the new statutory provision regarding dyed, printed, or finished thread.

8. Finally, the preference group descriptions on the Certificate of Origin set forth under paragraph (b) of § 10.224 are revised to reflect the amended product descriptions in the statute and to include a reference to articles covered by new clause (ix) of paragraph (2)(A) of the statute and paragraph (a)(13) of § 10.223.

Other amendments

In addition to the regulatory amendments described above that result from the changes made to section 213(b) of the CBERA by section 3107(a) of the Act, Customs has included in this document a number of other changes to the interim regulations published in T.D. 00–68. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. In § 10.222, in the text of the definition of "assembled in one or more CBTPA beneficiary countries," the word "CBTPA" is added before the words "beneficiary countries."

2. Customs believes that it would be useful to include a definition of "luggage" in the regulatory texts in order to clarify the scope of paragraphs (a)(10) and (a)(11) of § 10.223. Customs further believes that the meaning of this term should be consistent with trade practice to the greatest extent practicable. While no definition of luggage appears in the HTSUS, it is noted that this term was defined with specificity in the Subpart D headnotes to Schedule 7 of the predecessor Tariff Schedules of the United States (TSUS). Customs believes that the TSUS definition is consistent with what the industry would consider "luggage" to have been then and to be now. Accordingly, § 10.222 is amended by the inclusion of a new definition of "luggage" that is based on the definition that appeared in the TSUS.

3. Customs has found two errors in the § 10.222 definition of "wholly formed" as it relates to yarns or thread. First, the reference to "thread" in this context is inappropriate because the CBTPA texts do not use the expression "wholly formed" with reference to thread (thread needs only to be "formed" in the United States). Second, Customs failed to provide for textile strip classified in headings 5404 and 5405 of the HTSUS.

Regarding the second point, it is noted that textile strip may be formed by extrusion, similar to the formation of filaments, or may be formed by slitting plastic film or sheet. With regard to what may be considered to be a yarn, Customs notes that "yarn" is defined in the *Dictionary of Fiber & Textile Technology* (KoSa, 1999), at 222, as follows: "A

generic term for a continuous strand of textile fibers, filaments, or material in a form suitable for knitting, weaving, or otherwise intertwining to form a textile fabric. Yarn occurs in the following forms: (1) a number of fibers twisted together (spun yarn), (2) a number of filaments laid together without twist (a zero-twist yarn), (3) a number of filaments laid together with a degree of twist, (4) a single filament with or without twist (a monofilament), or (5) a narrow strip of material, such as paper, plastic film, or metal foil, with or without twist, intended for use in a textile construction." The identical definition is found in *Dictionary of Fiber & Textile Technology* (Hoechst Celanese, 1990) at 181. There is nothing to indicate that Congress intended textile strip to be excluded from use in the CBTPA, and Customs believes the term "yarn" may be understood to include that type of material.

Accordingly, the definition of "wholly formed" as it relates to yarns is amended in this document by removing the words "or thread" and by adding language regarding textile strip.

4. In § 10.223(a)(4), in the second parentheses, the words "classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section" are added in order to align the text more closely on the corresponding wording in HTSUS subheading 9820.11.09.

5. With reference to the findings, trimmings and interlinings provisions under redesignated § 10.223(c)(1), Customs believes that it would be useful to specify in the regulatory texts an appropriate basis for determining the "cost" of the components and the "value" of the findings and trimmings and interlinings. Customs further believes that the standard should be based on the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the GSP (in particular, 19 CFR 10.177(c)). Accordingly, this document adds a new subparagraph (ii) to § 10.223(c)(1), with former subparagraph (ii) consequently redesignated as (iii), to address this point.

6. In addition to the modification of the preference group descriptions on the Textile Certificate of Origin set forth under § 10.224(b) as discussed above, the format of the Certificate is modified and some of the blocks are reworded solely for purposes of clarity. The instructions for completion of the Certificate in paragraph (c) of § 10.224 are also revised to reflect the changes made to the Certificate and to provide additional clarification regarding its completion, including provision for signature by an exporter's authorized agent having knowledge of the relevant facts.

7. In the case of articles described in §§ 10.223(a)(1) and (a)(10), § 10.225(a) as published in T.D. 00–68 provided for the inclusion of the symbol "R" as a prefix to the applicable Chapter 98, HTSUS, subheading (that is subheading 9802.00.80) as the means for making the required written declaration on the entry documentation. This procedure was adopted because, contrary to the case of the other articles described

in § 10.223(a), no unique HTSUS subheading had been identified for these two groups of articles when T.D. 00–68 was published. Unique HTSUS subheadings now exist for these two groups of articles (that is, subheading 9802.00.8044 in the case of § 10.223(a)(1) articles and subheading 9802.00.8046 in the case of § 10.223(a)(10) articles). Accordingly, § 10.225(a) has been modified to prescribe the same entry documentation declaration procedure for all articles described in § 10.223, that is, inclusion of the HTSUS Chapter 98 subheading under which the article is classified.

8. In § 10.227(a)(2) and (3), the words "in a CBTPA beneficiary country" have been removed in recognition of the fact that verification of documentation and other information regarding country of origin and verification of evidence regarding the use of U.S. materials might take place outside a beneficiary country, for example within the United States.

9. Finally, in addition to those conforming changes already noted above, some paragraph or other references within regulatory text in §§ 10.223, 226 and 10.227 have been changed to conform to changes to the regulatory texts discussed above.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS AND THE REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the Caribbean Basin Economic Recovery Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

2. In § 10.222:

a. The text of the definition of "assembled in one or more CBTPA beneficiary countries" is amended by adding the word "CBTPA" between the words "more" and "beneficiary";

b. A new definition of "luggage" is added; and

c. The text of the definition of "wholly formed" is amended by removing the words "or thread" and adding after "filament" the words ", strip, film, or sheet and including slitting a film or sheet into strip,".

The addition reads as follows:

§ 10.222 Definitions.

* * * * * * *

Luggage. "Luggage" means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term "luggage" does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term "luggage" also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

* * * * * * *

3. In § 10.223:

a. Paragraphs (a)(1), (a)(2) and (a)(3) are revised;

b. Paragraph (a)(4) is amended by removing the words "(other than non-underwear t-shirts)" and adding, in their place, the words "(other than non-underwear t-shirts classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section)";

c. Paragraph (a)(6) is revised;

d. Paragraph (a)(11) is amended by removing the word "and" after the semicolon;

e. Paragraph (a)(12) is revised;

f. A new paragraph (a)(13) is added;

g. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively and a new paragraph (b) is added; and

h. In newly redesignated paragraph (c), paragraph (c)(1)(ii) is redesignated as paragraph (c)(1)(iii), newly redesignated paragraph (c)(1)(iii) is amended by removing the words "paragraph (b)(1)(i)(A)" and adding, in their place, the words "paragraph (c)(1)(i)(A)" and removing the words "paragraph (b)(1)(i)" and adding, in their place, the words "paragraph (c)(1)(i)", and new paragraphs (c)(1)(ii) and (c)(3) are added.

The revisions and additions read as follows:

§ 10.223 Articles eligible for preferential treatment.

(a) * * *

(1) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or

from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(2) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(3) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

* * * * * * *

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more CBTPA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(5), paragraphs (a)(7) through (a)(9), or paragraph (a)(12), and provided that any applicable additional requirements set forth in § 10.228 are met;

* * * * * * *

(12) Knitted or crocheted apparel articles cut and assembled in one or more CBTPA beneficiary countries from fabrics wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed wholly in the United States), provided that the assembly is with thread formed in the United States, and provided that

any other processing involving the article conforms to the rules set forth in paragraph (b) of this section; and

(13) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(13)(i) or paragraph (a)(13)(ii) of this section; and

(iv) Provided that any processing not described in this paragraph (a)(13) conforms to the rules set forth in paragraph (b) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), (a)(3), (a)(12), or (a)(13) of this section that is entered on or after September 1, 2002, and that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country without affecting the eligibility

of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) * * *

(1) * * *

(ii) *"Cost" and "value" defined.* The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

* * * * * * *

(3) *Dyed, printed, or finished thread.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

* * * * * * *

4. In § 10.224, paragraphs (b) and (c) are revised to read as follows:

§ 10.224 Certificate of Origin.

* * * * * * *

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT
TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	Each description below is only a summary of the cited CFR provision.	19 CFR
A.	Apparel assembled from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(1)
B.	Apparel assembled and further processed from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(2)
C.	Apparel (except apparel in group K) assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(3)
D.	Apparel knit-to-shape in the region from U.S. yarn (except socks in heading 6115); and knit apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn. This group does not include non-underwear t-shirts in group E.	10.223(a)(4)
E.	Non-underwear t-shirts in subheading 6109.10.00 & 6109.90.10 made of regional fabric from U.S. yarn.	10.223(a)(5)
F.	Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries.	10.223(a)(6)
G.	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.223(a)(7) 10.223(a)(8)
H.	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles—as defined in bilateral consultations.	10.223(a)(9)
I.	Textile luggage assembled from U.S. formed and cut fabric from U.S. yarns.	10.223(a)(10)
J.	Textile luggage cut and assembled from U.S. fabric from U.S. yarn.	10.223(a)(11)
K.	Knit apparel assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(12)
L.	Apparel assembled with U.S. thread from (1) U.S. fabric cut in the United States and the region, or (2) components knit-to-shape in the United States and the region, or (3) a combination of cutting and knitting-to-shape in the United States or the region.	10.223(a)(13)

6. U.S./Caribbean Fabric Producer Name & Address:	7. U.S./Caribbean Yarn Producer Name & Address:
	8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17: Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(12) Block 10 should be completed if the article described in block 5 incorporates a fabric or yarn described in preference group G and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The "to" date is the date on which the blanket period expires; and

(16) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

5. In § 10.225, paragraph (a) is revised to read as follows:

§ 10.225 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.224 and that covers the article being imported.

* * * * * * *

6. In § 10.226, the second sentence of paragraph (b)(4)(ii) is amended by removing the reference "§ 10.224(c)(14)" and adding, in its place, the reference "§ 10.224(c)(15)".

7. In § 10.227:

a. Paragraph (a)(2) is amended by removing the words "in a CBTPA beneficiary country";

b. Paragraph (a)(3) is amended by removing the words "in a CBTPA beneficiary country"; and

c. Paragraph (b)(3) is amended by removing the words "§ 10.223(c)(3)(i) through (iii)" and adding, in their place, the words "§ 10.223(d)(3)(i) through (iii)".

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 28, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 21, 2003 (68 FR 13827)]

19 CFR Part 12

(T.D. 03–13)

RIN 1515–AD15

ENTRY OF CERTAIN STEEL PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations to set forth special requirements for the entry of certain steel products. The steel products in question are primarily those designated by the President in Proclamation 7529 for increased duty or tariff-rate quota treatment under the safeguard provisions of section 203 of the Trade Act of 1974. The amendment requires the inclusion of an import license number on the entry summary or foreign-trade zone admission documentation filed with Customs for any steel product for which the U.S. Department of Commerce requires an import license under its steel licensing and import monitoring program.

EFFECTIVE DATE: Final rule effective: March 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Santana, Office of Field Operations (202–927–4342).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 5, 2002, President Bush signed Proclamation 7529 "To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products," which was published in the Federal Register (67 FR 10553) on March 7, 2002. The Proclamation was issued under section 203 of the Trade Act of 1974, as amended (19 U.S.C. 2253), and was in response to determinations by the U.S. International Trade Commission (ITC) under section 202 of the Trade Act of 1974, as amended (19 U.S.C. 2252), that certain steel products were being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat of serious injury, to the domestic industries producing like or directly competitive articles. The action taken by the President in the Proclamation consisted of the implementation of certain "safeguard measures," specifically, the imposition of a tariff-rate quota on imports of specified steel slabs and an increase in duties on other specified steel products. The Proclamation included an Annex setting forth appropriate modifications to the Harmonized Tariff Schedule of the United States (HTSUS) to effectuate the President's action. The modifications to the HTSUS, which involved Subchapter III of Chapter

99 and included the addition of a new U.S. Note 11 and the addition of numerous new subheadings to cover the affected steel products, were made effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002.

On March 5, 2002, the President issued a Memorandum to the Secretary of the Treasury, the Secretary of Commerce, and the United States Trade Representative entitled "Action Under Section 203 of the Trade Act of 1974 Concerning Certain Steel Products," which also was published in the Federal Register (67 FR 10593) on March 7, 2002. The Memorandum included an instruction to the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. In addition, the Memorandum instructed the Secretary of Commerce, within 120 days of the effective date of the safeguard measures established by Proclamation 7529, to publish regulations in the Federal Register establishing the system of import licensing.

On July 18, 2002, the International Trade Administration of the Department of Commerce published in the Federal Register (67 FR 47338) a proposed rule to establish a steel licensing and surge monitoring system as instructed by the President in the March 5, 2002, Memorandum. Under the Commerce proposal, all importers of steel products covered by the President's section 203 action, including those products subject to country exemptions or product exclusions, would be required to obtain a steel import license and to provide the license information (that is, the license number) to Customs except in the case of merchandise which is eligible for informal entry under § 143.21 of the Customs Regulations (19 CFR 143.21). Commerce proposed to institute a registration system for steel importers, and steel import licenses would be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. Once registered, an importer or broker would submit the required license application information electronically to Commerce, and the system would then automatically issue a steel import license number for inclusion on the entry summary documentation filed with Customs.

Although the Presidential Memorandum of March 5, 2002, vested primary responsibility for the steel product import licensing and monitoring procedures in the Secretary of Commerce, the Secretary of the Treasury, through the U.S. Customs Service, is primarily responsible for the promulgation and administration of regulations regarding the importation and entry of merchandise in the United States. Accordingly, on August 9, 2002, Customs published in the Federal Register (67 FR 51800) a notice of proposed rulemaking to amend the Customs Regulations to provide an appropriate regulatory basis for the collection of the steel import license number on the entry summary documentation in accordance with the proposed regulatory standards promulgated by the Department of Commerce. The proposed amendment involved the addition of a new § 12.145 (19 CFR 12.145) to require the inclusion of a steel

import license number on the entry summary in any case in which a steel import license number is required to be obtained under regulations promulgated by the Department of Commerce.

The August 9, 2002, notice included in the preamble a discussion of the potential consequences under the importer's bond for a failure to provide the required steel import license number to Customs on a timely basis and included a statement that, after new § 12.145 has been adopted as a final rule, Customs would publish appropriate guidelines which could outline circumstances in which liquidated damage claims in these cases may be reduced to $50 for a late filing of the required information or to $100 in the case of a complete failure to file the information. The August 9, 2002, notice also invited the public to submit written comments on the proposed regulatory amendment for consideration by Customs prior to taking final action of the proposal.

On December 31, 2002, the International Trade Administration of the Department of Commerce published in the Federal Register (67 FR 79845) a final rule document to add new regulations implementing the Steel Import Licensing and Surge Monitoring program. Those regulations, set forth at 19 CFR Part 360, consist of eight sections (§§ 360.101–360.108) and reflect, with some changes, the proposals outlined in the proposed rule published by the Department of Commerce on July 31, 2002. Those changes reflected in the final regulatory texts adopted by Commerce that have a substantive impact on the text of § 12.145 as proposed by Customs are identified in the discussion of comments on the Customs proposal set forth below.

Discussion of Comments

Three commenters responded to the solicitation of comments in the August 9, 2002, notice of proposed rulemaking. Those comments are summarized and responded to below.

Comment:

One commenter asserted that foreign-trade zone (FTZ) activities are part of the U.S. economic territory (even though they are legally defined as outside the customs territory of the United States) and that FTZ-stored steel constitutes part of U.S. steel inventories. This commenter therefore argued that FTZ activities must be included in the steel import licensing system and, further, that this FTZ license requirement should be imposed once, that is, at the time of admission of the steel into the FTZ.

Customs response:

Customs notes that the issue raised by this commenter concerns the scope of the steel import licensing program which is a matter for which the Department of Commerce, rather than Customs, is responsible; therefore, Customs has no authority to impose the standard suggested by this commenter. However, Customs also notes in this regard that whereas under the July 18, 2002, Department of Commerce proposals a license would have been required for steel products twice, that is, as they

entered and as they left an FTZ, the Commerce regulations adopted in the December 31, 2002, final rule document have addressed the concern raised by this commenter. Section 360.101(c) of those regulations specifically provides that all shipments of covered steel products into FTZs will require an import license prior to the filing of FTZ admission documents, that the license number(s) must be reported on the application for FTZ admission and/or status designation (Customs Form 214) at the time of filing, and that a further steel license will not be required for shipments from FTZs into the commerce of the United States.

In order to reflect the standard regarding FTZ transactions set forth in the Commerce regulation referred to above, Customs in this final rule document has redrafted proposed § 12.145 to accommodate a reference to inclusion of the appropriate license number on Customs Form 214 at the time of filing with Customs. Thus, under the revised text, the import license number must be provided to Customs in two basic circumstances: (1) on Customs Form 7501 (or an electronic equivalent) in the case of entered merchandise; and (2) on Customs Form 214 in the case of merchandise admitted into an FTZ. In addition, the opening exception clause regarding informal entry that was included in the proposed text has not been retained in the revised § 12.145 text because it is covered in the license issuance standards promulgated by Commerce and thus does not have to be repeated here.

Comment:

A commenter stated that in administrative message 02–0910 dated July 19, 2002, Customs presented a proposed methodology for enforcing compliance with the proposed licensing system subject to the August 9, 2002, Customs notice of proposed rulemaking. Under this methodology, foreign steel subject to licensing may enter a Customs bonded warehouse or be covered by a temporary importation bond (TIB) without a license; the license would be optional for both the warehouse and TIB entries. Stating that this optional treatment is inconsistent with the purpose of the licensing system, this commenter argued that all foreign steel subject to the licensing requirements should be treated identically, regardless of whether the steel is placed in a bonded facility, covered by a TIB, or admitted into an FTZ, and that this identical treatment should require the steel to be licensed and counted when it is admitted into an FTZ, entered into a bonded warehouse, or entered on a TIB.

Customs response:

As regards the administrative message referred to by this commenter, Customs notes that it was intended only to advise the trade on the system requirements for filing the steel license information (number) when entry filing is effected electronically in the Automated Commercial System (ACS) through the automated broker interface (ABI). The administrative message was issued in recognition of the considerable lead time that is necessary in order to reprogram ABI user software and reflected the best information available at that time from the Department of Commerce regarding the steel import licensing program re-

quirements, that is, the proposals published by Commerce on July 18, 2002.

As indicated in the preceding comment discussion regarding FTZs, the primary responsibility for the steel import licensing program rests with the Department of Commerce and, accordingly, Customs has no authority to impose standards that are at variance with the program requirements properly established by Commerce. Customs further notes that, in the final regulations published by Commerce on December 31, 2002, § 360.101(e) provides that import licenses are not required in the case of TIB entries, transportation and exportation (T&E) entries, and entries into a bonded warehouse, and that a license is required at the time of entry summary in the case of a covered steel product that is withdrawn from a bonded warehouse. In view of this regulatory standard, Customs cannot adopt the "identical" treatment principle suggested by this commenter, and the text of § 12.145 set forth in this final rule document has been modified to refer specifically to merchandise "entered, or withdrawn from warehouse for consumption, in the customs territory of the United States" in order to exclude from coverage TIB, T&E, and warehouse entry transactions.

Comment:

A commenter referred to a statement that "[a]ll imports of steel products * * * will be required to obtain a steel import license and provide the license number to U.S. Customs on the entry summary." This commenter raised the issue regarding the point at which a material is considered to be "imported" and suggested that, in the case of warehouse entries, that point should be when the material is withdrawn from the warehouse and a consumption entry is filed and not when the material is offloaded under a warehouse entry and maintained in the bonded warehouse.

Customs response:

The statement referred to by this commenter appeared in the proposed rule document published by the Department of Commerce on July 18, 2002, rather than in the notice of proposed rulemaking published by Customs on August 9, 2002. The statement was not set forth in that document as proposed regulatory text and therefore appears to have been directed to the general thrust of the steel import licensing program. Customs further notes that under the program as developed by Commerce, the mere fact of importation is not controlling as regards the licensing and license number reporting requirements. Rather, as already indicated in this comment discussion, the Department of Commerce proposals and final regulatory texts, as well as the text of § 12.145 as proposed and as set forth in this final rule document, make it clear that those requirements do not arise at the time of entry into a bonded warehouse but rather only upon withdrawal from the warehouse when Customs Form 7501 will be filed.

Comment:

A commenter recommended that the Customs entry number not be a requirement at the time of applying for a license unless it is available at the time of filing. This commenter referred to two situations in which it would not be possible to provide the proper entry number when applying for the license. One situation involves Customs bonded warehouses, where the entry number assigned at the time of arrival in the United States is not the same as the entry number that applies when duty is eventually paid. The other situation involves split shipment situations where a portion of the cargo covered by one invoice or bill of lading is discharged and moved overland separately from the rest of the cargo, with the result that multiple entries will be filed for the merchandise covered by the one invoice or bill of lading.

Customs response:

Customs first notes that the observations made by this commenter relate to the license issuance process which is controlled by the Department of Commerce regulations and not by the regulations promulgated by Customs. Moreover, Customs notes that, in the final regulations published by Commerce on December 31, 2002, § 360.103(b) provides that license filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the entry number is known at the time of filing for the license. Accordingly, the concern expressed by this commenter has been addressed in the Commerce final regulations.

Comment:

A commenter referred to a statement that "[t]he applicable license number(s) must cover the total quantity of steel entered and should match the information provided on the Customs entry summary." This commenter argued that it would be difficult to meet this requirement in some cases involving warehouse entries. For example, where goods are withdrawn for export to Canada, the inclusion of those quantities on an application for a license at the time of "entry" into the port would have an impact on the validity of the data collected. This commenter also noted the possibility that a warehouse entry could be open for an extended period of time, requiring the government to monitor the open license for months or even years.

Customs response:

The statement referred to by this commenter appeared in the proposed rule document published by the Department of Commerce on July 18, 2002, rather than in the notice of proposed rulemaking published by Customs on August 9, 2002, and this statement was not set forth in that document as proposed regulatory text. A similar statement does appear as regulatory text in the final rule document published by Commerce on December 31, 2002: the last sentence of § 360.101(a)(2) reads "[t]he applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry sum-

mary." This sentence appears in the context of a discussion of when a single license may cover multiple products and when separate licenses for steel entered under a single entry are required, and it immediately follows the statement that "[a]s a result, a single Customs entry may require more than one steel import license." The regulatory text in question thus relates to the scope of the licensing procedure and therefore falls directly under the authority of Commerce rather than that of Customs.

Customs would also suggest that the potential problem outlined by the commenter regarding goods withdrawn from warehouse for shipment to Canada could be avoided by controlling the point at which application for the license is made. In other words, even though under 19 CFR 181.53 goods withdrawn from a U.S. duty-deferral program (such as a Customs bonded warehouse) for exportation to Canada must be treated as entered or withdrawn for consumption, and thus a Customs Form 7501 must be filed as a consequence of that exportation, the potential problem outlined by this commenter could be avoided simply if the importer did not apply for the license when the steel is entered in the warehouse but rather only when it, or any part of it, is withdrawn for shipment to Canada. This approach would also address the "open license" issue raised by this commenter.

Comment:

One commenter raised an issue regarding the impact of the proposal on quota monitoring. The commenter specifically asked whether the licenses will play a role in tracking the quota for products excluded from the safeguard action that include a quota mechanism. This commenter suggested that the answer to this question would greatly impact both the timing for filing the license application and what information might need to be included on the application.

Customs response:

Customs is simply responsible for collecting the license number and any related quota or other data required at the time of entry and for providing that data to the Department of Commerce. Responsibility for all other tracking aspects of the data collected lies with the Commerce and therefore is outside the regulatory authority exercised by Customs.

Comment:

A commenter stated that the sole enforcement authority that Customs has regarding the proposed rule is the liquidated damages provision under 19 CFR 113.62. This commenter further argued that since Customs can mitigate liquidated damage claims, Customs must design its mitigation guidelines with respect to steel import licenses to ensure that importers will have a strong incentive to comply with the regulatory requirements. The commenter also referred to the preamble discussion in the August 9, 2002, notice of proposed rulemaking regarding future mitigation guidelines that would include a reduction of liquidated damage claims to $50 for a late filing of the required information

or $100 in the case of a complete failure to file the information. Arguing that these amounts are negligible, the commenter stated that Customs should adopt guidelines similar to those which governed the entry of products from Canada under the 1996 Softwood Lumber Agreement, that is, mitigation to between 25 and 50 percent of the claim, but not less than $500 and not more than $3,000 per entry, and no mitigation if the importer completely failed to provide the required information.

Customs response:

Customs does not agree that the mitigation standards applied to cases involving softwood lumber from Canada are appropriate in the present context. Subject to any changes that may be reflected in any published mitigation guidelines regarding the steel import license program, Customs remains of the opinion that the mitigated amounts reflected in the August 9, 2002, notice of proposed rulemaking are generally appropriate in this context.

CONCLUSION

Based on the final regulations adopted by the Department of Commerce and the analysis of the comments received as set forth above, Customs believes that proposed § 12.145 should be adopted as a final regulation with the changes to the text as discussed above.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment will not have a significant economic impact on a substantial number of small entities. Customs believes that the amendment, which involves the addition of only one data element to each of two existing required Customs forms, will have a negligible impact on importer operations. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0065 (Entry summary and continuation sheet) and OMB control number 1515–0086 (Application for foreign-trade zone admission and/or status designation). This rule does not involve any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

AMENDMENT TO THE REGULATIONS

For the reasons stated in the preamble, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * * * *

2. A new center heading and new § 12.145 are added to read as follows:

STEEL PRODUCTS

§ 12.145 Entry or admission of certain steel products.

In any case in which a steel import license number is required to be obtained under regulations promulgated by the U.S. Department of Commerce, that license number must be included:

(a) On the entry summary, Customs Form 7501, or on an electronic equivalent, at the time of filing, in the case of merchandise entered, or withdrawn from warehouse for consumption, in the customs territory of the United States; or

(b) On Customs Form 214, at the time of filing under Part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 25, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 21, 2003 (68 FR 13835)]

19 CFR Parts 4, 113 and 178

(T.D. 03–14)

RIN 1515–AC58

DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, a proposed amendment to the Customs Regulations to set forth procedures for the deferral of entry filing and duty collection on certain yachts imported for sale at boat shows in the United States. The regulatory amendments reflect a change in the law effected by section 2406 of the Miscellaneous Trade and Technical Corrections Act of 1999.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT:

Legal matters: Glen Vereb, Office of Regulations and Rulings (202–572–8730).

Operational matters: Peter Flores, Office of Field Operations (202–927–0333).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act, Public Law 106–36, 113 Stat. 127) amended the Tariff Act of 1930 by the addition of a new section 484b (19 U.S.C. 1484b). Section 484b provides that an otherwise dutiable "large yacht" (defined in the section as "a vessel that exceeds 79 feet in length, is used primarily for recreation or pleasure, and has been previously sold by a manufacturer or dealer to a retail consumer") may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the United States. The statute provides generally for the deferral of payment of duty until the yacht is sold but specifies that the duty-deferral period may not exceed 6 months.

In order to qualify for deferral of duty payment at the time of importation of a large yacht, the statute provides that the importer of record must: (1) certify to Customs that the yacht is imported pursuant to section 484b for sale at a boat show in the United States; and (2) post a bond, having a duration of 6 months after the date of importation, in an amount equal to twice the amount of duty on the yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The statute

further provides that if the yacht is sold within the 6-month period after importation, or if the yacht is neither sold nor exported within the 6-month period after importation, entry must be completed and duty must be deposited with Customs (with the duty calculated at the applicable HTSUS rate based on the value of the yacht at the time of importation) and the required bond will be returned to the importer. The statute further provides that no extensions of the 6-month bond period will be allowed, that any large yacht exported in compliance with the 6-month bond period may not be reentered for purposes of sale at a boat show in the United States (in order to receive duty-deferral benefits) for a period of 3 months after that exportation, and that the Secretary of the Treasury is authorized to make rules and regulations as may be necessary to carry out the provisions of the statute. Finally, under section 2406(b) of the Act, the amendment made by section 2406(a) of the Act applies with respect to any large yacht imported into the United States after July 10, 1999.

In order to reflect the terms of new section 484b, Customs on June 15, 2000, published a notice of proposed rulemaking in the Federal Register (65 FR 37501) to amend the Customs Regulations by the addition of a new § 4.94a (19 CFR 4.94a). In addition, Customs proposed in that document to amend Part 113 of the Customs Regulations (19 CFR Part 113), which sets forth provisions regarding Customs bonds, by the addition of a new § 113.75 and a new Appendix provision setting forth the text of the bond required to be posted by the importer of record under new section 484b.

The June 15, 2000, notice of proposed rulemaking invited the submission of public comments on the proposed amendments, and the public comment period closed on August 14, 2000. Two commenters responded to that solicitation of comments. A discussion of their comments follows.

Discussion of Comments

The two commenters made the same three points which centered on paragraphs (a)(4) and (a)(5) of proposed § 4.94a which set forth two of the conditions that give rise to the bond obligation. Paragraph (a)(4) provides that all subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of § 4.94a, must be carried out in the same port of entry in which the certification was filed and the bond was posted under § 4.94a (paragraphs (b) through (d) concern, respectively, exportation of the yacht within the 6-month bond period, sale of the yacht within the 6-month bond period, and expiration of the bond period). Paragraph (a)(5) provides that the vessel in question will not be eligible for issuance of a cruising license under § 4.94.

Comment:

With regard to paragraph (a)(4), the commenters made the point that in matters involving the sale of large yachts of the type under consideration, there might often be protracted negotiations which could continue for weeks or even months after the conclusion of the actual boat show

at which an offer of sale was made. They stated that the final regulations should make provision for that type of eventuality by specifically providing that negotiations are permitted to continue with respect to any person who viewed a yacht at a boat show, up to the expiration of the 6-month bond period.

Customs Response:

Customs does not read either the statute or the language of the proposed regulations as precluding the continuation or conclusion of negotiations following a boat show so long as they do not continue beyond the expiration date of the bond. The statute merely provides that at the time of importation the importer of record must certify to Customs that the vessel is imported for sale at a yacht show and must post a bond of 6 months duration. Customs interprets the law to provide that so long as the importation is in pursuance of showing and offering a qualifying vessel for sale at a boat show, a 6-month period is provided during which a sale must be completed. Customs in this final rule document has added language to § 4.94a(c) and (d) to expressly refer to completion of the sale. A sale is completed when title passes to the new owner. The alternatives to this are that either the vessel must be exported or, once the bond expires, the entry process must be completed.

On a related matter not raised in the comments, Customs notes that whereas the prescribed bond period is 6 months and may not be extended, the obligations imposed on the importer under the statute and the regulatory text include actions (that is, advising Customs within 30 days if the yacht is exported or completing the entry within 15 days if the yacht is sold or is neither sold nor exported within that 6-month period) that may be completed after expiration of the bond period. In order to ensure that there is an appropriate enforcement mechanism under the bond covering all obligations under the statute, including those that may lawfully be met after the bond period has expired, the terms of the bond set forth in Appendix C to Part 113 have been modified to include a reference to a claim for liquidated damages for a failure to advise Customs of an exportation or to complete the entry unless either or those actions is taken within the prescribed time limits.

Comment:

Also with regard to paragraph (a)(4), the commenters stated that limited advertising should be allowed when a yacht is imported under the subject program, and they suggested that notice may be required that the vessel is "not available for boarding" during the 6-month period of bond coverage except at a boat show.

Customs Response:

The commenters appear to be arguing, at least in part, against the first point they raised with respect to the continuation of negotiations. Among the mentioned activities which might ensue during after-show negotiations are sea trials during which boarding surely would be required.

Again, Customs does not find either in the new law or in the proposed regulations any limiting language which would preclude advertising a yacht imported for the stated limited purposes. Protection of the revenue is assured by virtue of the statutory bond requirement. If Customs determines that the certification of the importer of record is not honored in that the vessel was not in fact imported for sale at a boat show (such as, upon investigation, there being no evidence that the boat was shown and made available to potential buyers at a boat show), in addition to possible penalty action, a demand could be made against the bond. Customs finds no need for additional regulatory language in this regard.

Comment:

Finally, the commenters referred to the language of paragraph (a)(5) and pointed out that boat shows take place in more than one location and within the jurisdiction of different Customs ports in South Florida. They noted that a typical boat show does not last longer than two weeks and that the law does not restrict the number of shows at which a vessel may be offered for sale during the 6-month bond period. They further noted that the proposed regulation, while making clear that the vessels in question may not obtain cruising licenses, is silent with respect to whether those vessels may be granted permits to proceed between ports in the United States. The commenters urged Customs to add language to the regulations stating that the vessels under consideration may obtain a "permit to proceed."

Customs Response:

The language relating to cruising licenses was included in the proposed regulation because the terms of a cruising license specifically prohibit a licensed vessel from being brought into the United States for sale or charter to a resident of the United States, or from being so offered during the pendency of the license. A cruising license is a mere accommodation available to certain vessels which exempts them from the necessity to enter and clear at U.S. ports. Possession of a license is not necessary in order for a pleasure vessel to travel between ports of the United States. It was not the intention of Customs to suggest that a restriction would be imposed upon vessel movement. It would merely be necessary that vessels covered by § 4.94a would have to comply with the normal requirements regarding vessel entry and clearance when traversing U.S. ports. In order to clarify this issue, Customs in this final rule document has added the words "and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section" at the end of paragraph (a)(5) of § 4.94a.

CONCLUSION

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that the proposed regulatory amendments should be adopted as a final rule with the

changes discussed above, together with one editorial change, as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments directly reflect a statutory provision that accords procedural and financial benefits to members of the general public who import large yachts for purposes of sale. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Furthermore, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0223. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this document is in § 4.94a. This information is required and will be used to effect the deferral of duty collection on certain pleasure vessels, in order to ensure enforcement of the Customs and related laws and the protection of the revenue. The likely respondents are owners of large pleasure vessels.

The estimated average annual burden associated with this collection of information is 1 hour per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

LIST OF SUBJECTS

19 CFR Part 4

Customs duties and inspection, Entry, Imports, Reporting and recordkeeping requirements, Vessels, Yachts.

19 CFR Part 113

Bonds, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds, Vessels.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Accordingly, for the reasons stated in the preamble, Parts 4, 113 and 178, Customs Regulations (19 CFR Parts 4, 113 and 178), are amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read, and a specific authority citation for § 4.94a is added to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * * * *

Section 4.94a also issued under 19 U.S.C. 1484b;

* * * * * * *

2. A new § 4.94a is added to read as follows:

§ 4.94a Large yachts imported for sale.

(a) *General.* An otherwise dutiable vessel used primarily for recreation or pleasure and exceeding 79 feet in length that has been previously sold by a manufacturer or dealer to a retail consumer and that is imported with the intention to offer for sale at a boat show in the United States may qualify at the time of importation for a deferral of entry completion and deposit of duty. The following requirements and conditions will apply in connection with a deferral of entry completion and duty deposit under this section:

(1) The importer of record must certify to Customs in writing that the vessel is being imported pursuant to 19 U.S.C. 1484b for sale at a boat show in the United States;

(2) The certification referred to in paragraph (a)(1) of this section must be accompanied by the posting of a single entry bond containing the terms and conditions set forth in appendix C of part 113 of this chapter. The bond will have a duration of 6 months after the date of importation of the vessel, and no extensions of the bond period will be allowed;

(3) The filing of the certification and the posting of the bond in accordance with this section will permit Customs to determine whether the vessel may be released;

(4) All subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of this section, must be carried out in the same port of entry in which the certification was filed and the bond was posted under this section; and

(5) The vessel in question will not be eligible for issuance of a cruising license under § 4.94 and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section.

(b) *Exportation within 6-month period.* If a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is not sold but is exported within the 6-month bond period speci-

fied in paragraph (a)(2) of this section, the importer of record must inform Customs in writing of that fact within 30 calendar days after the date of exportation. The bond posted with Customs will be returned to the importer of record and no entry completion and duty payment will be required. The exported vessel will be precluded from reentry under the terms of paragraph (a) of this section for a period of 3 months after the date of exportation.

(c) *Sale within 6-month period.* If the sale of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is completed within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record within 15 calendar days after completion of the sale must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record.

(d) *Expiration of bond period.* If the 6-month bond period specified in paragraph (a)(2) of this section expires without either the completed sale or the exportation of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section, the importer of record within 15 calendar days after expiration of that 6-month period must complete the entry by filing an Entry Summary (Customs Form 7501) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record, and a new bond on Customs Form 301, containing the bond conditions set forth in section 113.62 of this chapter, may be required by the appropriate port director.

PART 113—CUSTOMS BONDS

1. The general authority citation for Part 113 continues to read, and a specific authority citation for § 113.75 and Appendix C is added to read, as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * * * *

Section 113.75 and Appendix C also issued under 19 U.S.C. 1484b.

2. Part 113 is amended by adding a new § 113.75 to read as follows:

§ 113.75 Bond conditions for deferral of duty on large yachts imported for sale at United States boat shows.

A bond for the deferral of entry completion and duty deposit pursuant to 19 U.S.C. 1484b for a dutiable large yacht imported for sale at a United States boat show must conform to the terms of appendix C to this part.

The bond must be filed in accordance with the provisions set forth in § 4.94a of this chapter.

3. Part 113 is amended by adding at the end a new appendix C to read as follows:

APPENDIX C TO PART 113—BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

_____, as principal, and _____, as surety, are held and firmly bound to the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these conditions.

Pursuant to the provisions of 19 U.S.C. 1484b, the principal has imported at the port of _____ a dutiable large yacht (exceeding 79 feet in length, used primarily for recreation or pleasure, and previously sold by a manufacturer or dealer to a consumer) identified as _____ for sale at a boat show in the United States with deferral of entry completion and duty deposit and has executed this obligation as a condition precedent to that deferral.

A failure to inform Customs in writing of an exportation, or to complete the required entry, within the 6-month bond period will give rise to a claim for liquidated damages unless the principal informs Customs of the exportation or completes the entry within the time limits prescribed in 19 CFR 4.94a. If the principal fails to comply with any condition of this obligation, which includes compliance with any requirement or condition set forth in 19 U.S.C. 1484b or 19 CFR 4.94a, the principal and surety jointly and severally agree to pay to Customs an amount of liquidated damages equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States. For purposes of this paragraph, the term "duty" includes any duties, taxes, fees and charges imposed by law.

The principal will exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the failure to store and deliver the large yacht as required, as well as from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the principal.

WITNESS our hands and seals this _____ day of _____ (month), _____ (Year).

_____ _____ [SEAL]

(Name) (Address) (Principal)

_____ _____ [SEAL]

(Name) (Address) (Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the * _____ of the corporation named as principal in the attached bond; that _____, who signed the bond on behalf of the principal, was then _____ of that corporation; that I know his signature, and his signature to the bond is genuine; and that the bond was duly signed, sealed, and attested for and in behalf of the corporation by authority to its governing body.

_____ [CORPORATE SEAL]

(To be used when no power of attorney has been filed with the port director of customs.)
** May be executed by the secretary, assistant secretary, or other officer of the corporation.*

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. In § 178.2, the table is amended by adding a new listing for § 4.94a in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	*Description*	*OMB Control No.*
* * * * * * *		
§ 4.94a	Deferral of duty on large yachts imported for sale.	1515–0223
* * * * * * *		

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 25, 2003.
TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 20, 2003 (68 FR 13623)]

19 CFR Part 10

(T.D. 03–15)

RIN 1515–AD20

TRADE BENEFITS UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that implement the trade benefits for sub-Saharan African countries contained in the African Growth and Opportunity Act (the AGOA). The interim regulatory amendments involve the textile and apparel provisions of the AGOA and in part reflect changes made to those statutory provisions by section 3108 of the Trade Act of 2002. The specific statutory changes addressed in this document involve the amendment of several provisions to clarify the status of apparel articles assembled from knit-to-shape components, the inclusion of a specific reference to apparel articles formed on seamless knitting machines, a change of the wool fiber diameter specified in one provision, and the addition of a new provision to cover additional production scenarios involving the United States and AGOA beneficiary countries. This document also includes a number of other changes to the AGOA implementing regulations to clarify a number of issues that arose after their original publication.

DATES: Interim rule effective March 21, 2003; comments must be submitted by May 20, 2003.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Robert Abels, Office of Field Operations (202–927–1959).

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8790).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The African Growth and Opportunity Act

The African Growth and Opportunity Act (the AGOA, Title I of Public Law 106–200, 114 Stat. 251) authorizes the President to extend certain

trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from designated beneficiary countries. The provisions of section 112 of the AGOA are reflected for tariff purposes in Subchapter XIX, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

Sections 10.211 through 10.217 of the Customs Regulations (19 CFR 10.211 through 10.217) set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment on textile and apparel articles pursuant to section 112 of the AGOA. Those regulations were adopted on an interim basis in T.D. 00–67, published in the Federal Register (65 FR 59668) on October 5, 2000, and took effect on October 1, 2000. Action to adopt those interim regulations as a final rule was withheld pending anticipated action on the part of Congress to amend the underlying statutory provisions.

Trade Act of 2002 amendments

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Public Law 107–210, 116 Stat. 933. Sections 3108(a) and (b) of the Act amended section 112(b) of the AGOA (19 U.S.C. 3721(b)) which specifies the textile and apparel articles to which preferential treatment applies under the AGOA. The amendments made by section 3108(a) of the Act to section 112(b) of the AGOA were as follows:

1. The article description in the introductory text of paragraph (b)(1) was amended to refer to apparel articles "sewn or otherwise" assembled and to include a reference to articles assembled "from components knit-to-shape." The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in the United States) that are * * *.

2. The article description in paragraph (b)(2) was reorganized in order to accommodate the addition of references to apparel articles "sewn or otherwise" assembled and to apparel articles assembled "from components knit-to-shape in the United States from yarns wholly formed in the United States." The amended statutory text reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Har-

monized Tariff Schedule of the United States and are wholly formed in the United States).

3. The article description in the introductory text of paragraph (b)(3) was amended by removing the words "and cut" after "wholly formed" within the parenthetical phrase, by adding a reference to articles assembled "from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries," and by adding a reference to "apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries." The amended statutory text reads as follows:

> Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if such fabrics are classified under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed in one or more beneficiary sub-Saharan African countries), or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, subject to the following:

4. The article description in paragraph (b)(3)(B)(i), which sets forth a special rule for lesser developed beneficiary sub-Saharan African countries, was amended to refer to preferential treatment "under this paragraph," to refer to apparel articles wholly assembled "or knit-to-shape and wholly assembled, or both," and to refer to preferential treatment regardless of the country of origin of the fabric "or the yarn." The amended statutory text reads as follows:

> Subject to subparagraph (A), preferential treatment under this paragraph shall be extended through September 30, 2004, for apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric or the yarn used to make such articles.

5. The definition of "lesser developed beneficiary sub-Saharan African country" in paragraph (b)(3)(B)(ii) was amended by replacing the reference to the World Bank with a reference to the International Bank for Reconstruction and Development and by the addition of separate subparagraph references to Botswana and Namibia. The latter amendment in effect removes those two countries from the maximum per capita gross national product standard that applies to other countries

covered by the definition. Neither of these changes affects the AGOA implementing regulations.

6. In paragraph (b)(4)(B), the reference to wool measuring "18.5" microns in diameter or finer was amended to read "21.5" microns in diameter or finer.

7. Finally, a new paragraph (b)(7) was added to cover hybrid operations, that is, combinations of various production scenarios described in other paragraphs under section 112(b). This new provision reads as follows:

> Apparel articles sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States from components cut in the United States and one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States and one or more beneficiary sub-Saharan African countries from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States).

Section 3108(b) of the Act amended section 112(b) of the AGOA by increasing the applicable percentage used for determining the quantitative limits that apply to apparel articles entitled to preferential treatment under paragraph (b)(3). This change does not affect the AGOA implementing regulations.

On November 13, 2002, the President signed Proclamation 7626 (published in the Federal Register at 67 FR 69459 on November 18, 2002) which, among other things, in Annex II sets forth modifications to the HTSUS to implement the changes to section 112(b) of the AGOA made by section 3108 of the Act. The Proclamation provides that the HTSUS modifications that implement the changes made by section 3108(a) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002. The Proclamation further provides that the HTSUS modifications that implement the change to the applicable quantitative limit percentage made by section 3108(b) of the Act are effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after October 1, 2002.

Changes to the interim regulatory texts

As a consequence of the statutory changes described above and as a result of the modifications to the HTSUS made by Proclamation 7626, the interim AGOA implementing regulations published in T.D. 00–67 no longer fully reflect the current state of the law. In addition, following publication of those interim regulations, a number of other issues came to the attention of Customs that warrant clarification in the AGOA implementing regulations. Accordingly, this document sets forth interim amendments to the AGOA implementing regulations, with provision

for public comment on those changes, to reflect the amendments to the statute mentioned above and to clarify or otherwise improve those previously published regulations. It is the intention of Customs, after the close of the public comment period prescribed in this document, to publish one document that (1) addresses both the comments submitted on the interim regulations published in T.D. 00–67 and the comments submitted on the interim regulations set forth in this document and (2) adopts, as a final rule, the AGOA implementing regulations contained in the two interim rule documents with any additional changes as may be appropriate based on issues raised in the submitted public comments. The interim regulatory changes contained in this document are discussed below.

Amendments to reflect the statutory changes

The interim regulatory amendments set forth in this document that are in response to the statutory changes made to section 112(b) of the AGOA by section 3108 of the Act are as follows:

1. In § 10.212, a new definition covering knit-to-shape components is added to reflect the inclusion of references to "components knit-to-shape" in paragraphs (b)(1), (b)(2), (b)(3), and (b)(7) of the statute. Also, as a consequence of the addition of this new definition, the interim definition of "knit-to-shape" is recast as a definition covering knit-to-shape articles but without any other change to the wording of the definition.

2. In § 10.212, a new definition of "wholly formed on seamless knitting machines" is added to clarify the meaning of this expression as used in the amended text of paragraph (b)(3) of the statute (§ 10.213(a)(4) of the regulatory texts).

3. In § 10.213, paragraphs (a)(1) and (a)(2) are revised to conform to the amendment of the product description in the introductory text of paragraph (b)(1) of the statute.

4. In § 10.213, paragraph (a)(3) is revised to conform to the amendment of the product description in paragraph (b)(2) of the statute.

5. In § 10.213, paragraph (a)(4) is revised to conform to the amendment of the product description in the introductory text of paragraph (b)(3) of the statute.

6. In § 10.213, paragraph (a)(5) is revised to conform to the amendment of the product description that applies to lesser developed beneficiary countries in paragraph (b)(3)(B)(i) of the statute.

7. In § 10.213, the reference to "18.5" microns in paragraph (a)(7) is changed to read "21.5" microns to reflect the amendment made to paragraph (b)(4)(B) of the statute.

8. In § 10.213, a new paragraph (a)(11) is added to cover the hybrid operations described in new paragraph (b)(7) of the statute.

9. Finally, the preference group descriptions on the Certificate of Origin set forth under paragraph (b) of § 10.214 are revised to reflect the amended product descriptions in the statute and to include a reference to articles covered by new paragraph (b)(7) of the statute and paragraph (a)(11) of § 10.213.

Other amendments

In addition to the regulatory amendments described above that result from the changes made to section 112(b) of the AGOA by section 3108 of the Act, Customs has included in this document a number of other changes to the interim regulations published in T.D. 00–67. These additional changes, which are intended to clarify or otherwise improve the interim regulatory texts, are as follows:

1. In the definition of "wholly formed" as it relates to yarn in the interim regulations, Customs failed to provide for textile strip of headings 5404 and 5405, HTSUS. Textile strip of headings 5404 and 5405, HTSUS, may be formed by extrusion, similar to the formation of filaments, or may be formed by slitting plastic film or sheet. With regard to what may be considered to be a yarn, Customs notes that "yarn" is defined in the *Dictionary of Fiber & Textile Technology* (KoSa, 1999), at 222, as follows: "A generic term for a continuous strand of textile fibers, filaments, or material in a form suitable for knitting, weaving, or otherwise intertwining to form a textile fabric. Yarn occurs in the following forms: (1) a number of fibers twisted together (spun yarn), (2) a number of filaments laid together without twist (a zero-twist yarn), (3) a number of filaments laid together with a degree of twist, (4) a single filament with or without twist (a monofilament), or (5) a narrow strip of material, such as paper, plastic film, or metal foil, with or without twist, intended for use in a textile construction." The identical definition is found in *Dictionary of Fiber & Textile Technology* (Hoechst Celanese, 1990) at 181. There is nothing to indicate that Congress intended textile strip to be excluded from use in the AGOA, and Customs believes the term "yarn" may be understood to include that type of material. Accordingly, this document revises the § 10.212 definition of "wholly formed" as it relates to yarn to include a reference to textile strip. In addition, this document divides that definition of "wholly formed" into two definitions, one with reference to wholly formed fabrics and the other with reference to wholly formed yarns (and the latter definition is further corrected by removing the words "and thread" to reflect the fact that the statute and regulations do not use the word "wholly" in the context of thread formation); Customs believes that this approach will better clarify that there are distinct contexts in which "wholly formed" is used in the statute and regulations, which now also include the new seamless knitting machine context referred to above. Finally, at the end of the "wholly formed fabrics" definition, the words "in a single country" are replaced by "in the United States or in one or more beneficiary countries" in order to reflect the fact that fabric may be wholly formed in more than one beneficiary country in the case of articles covered by section 112(b)(3) of the AGOA and § 10.213(a)(4) of the regulatory texts.

2. As noted above, quantitative limits apply for preferential treatment purposes in the case of articles covered by section 112(b)(3) of the AGOA which is reflected in § 10.213(a)(4) and (5) of the regulatory texts. Those quantitative limit provisions are set forth in U.S. Note 2 to Subchapter

XIX of Chapter 98, HTSUS, which requires the Committee for the Implementation of Textile Agreements to publish in the Federal Register the applicable aggregate quantity of imports allowed for each 12-month period. Customs believes that it would be helpful for a reader of the regulatory texts to know that those quantitative limits apply to the subject products. Accordingly, revised paragraphs (a)(4) and (a)(5) of § 10.213 as set forth in this document also include appropriate references to the quantitative limit provisions of U.S. Note 2 to Subchapter XIX of Chapter 98, HTSUS.

3. Section 112(b)(5)(A) of the AGOA, which is reflected in § 10.213(a)(8) of the regulatory texts, covers apparel articles that are constructed of either fabrics or yarns that are considered to be in "short supply" for purposes of Annex 401 of the NAFTA (that is, the fabrics or yarns are not required to be originating within the meaning of the NAFTA, if those fabrics or yarns undergo the specified tariff shift for that article and that article meets all other applicable requirements for an originating good). For example, sweaters of wool classified under subheading 6110.11.00 of the HTSUS that are knit to shape in a NAFTA country from 40 percent non-originating silk yarn and 60 percent originating wool yarn may qualify as originating goods because a tariff shift from silk yarn is allowed by the applicable tariff shift rule, but sweaters knit to shape from 40 percent originating silk yarn and 60 percent non-originating wool yarn will not qualify as originating goods because the non-originating wool yarn is classified under a heading (5106) from which a tariff shift is not allowed. Customs notes that the corresponding HTSUS provision (subheading 9819.11.21) contains a more explanatory description of the Annex 401 short supply rule; the regulatory text is revised in this document to conform to the approach used in the HTSUS provision. Customs further notes that the same short supply language appears within the textile provisions of the United States-Caribbean Basin Trade Partnership Act (the CBTPA) and the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), and in those contexts the short supply provision can only be interpreted to not apply to brassieres classifiable under subheading 6212.10 of the HTSUS because applying it would render meaningless the extensive provisions on brassieres in those Acts. Consequently, Customs has decided that the short supply provision does not apply to brassieres under the CBTPA and ATPDEA and that the same interpretation must apply for purposes of the AGOA. Customs notes in this regard that the NAFTA Annex 401 rule for articles classified in subheading 6212.10 of the HTSUS requires only the performance of certain specified production processes (that is, "both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties") and includes no requirements regarding the source of the fabrics or yarns. There is little logic in applying the short supply provision to a product where the NAFTA rule makes no mention of excluded materials. Thus, Customs believes that brassieres of subheading 6212.10, HTSUS, are not covered by section

112(b)(5)(A) of the AGOA and § 10.213(a)(8) of the regulations. The revised text of § 10.213(a)(8) set forth in this document therefore also includes appropriate exclusionary language to reflect this interpretation.

4. With reference to the findings, trimmings and interlinings provisions under § 10.213(b)(1), Customs believes that it would be useful to specify in the regulatory texts an appropriate basis for determining the "cost" of the components and the "value" of the findings and trimmings and interlinings. Customs further believes that the standard should be based on the regulations that apply to components and materials under subheading 9802.00.80, HTSUS (in particular, 19 CFR 10.17), and under the GSP (in particular, 19 CFR 10.177(c)). Accordingly, this document adds a new subparagraph (2) to § 10.213(b) to address this point and redesignates former subparagraph (2) of the interim regulatory texts as subparagraph (3).

5. In addition to the modification of the preference group descriptions on the Textile Certificate of Origin set forth under § 10.214(b) as discussed above, the format of the Certificate is modified and some of the blocks are moved and renumbered, solely for purposes of clarity. The instructions for completion of the Certificate in paragraph (c) of § 10.214 are also revised to reflect the changes made to the Certificate and to provide additional clarification regarding its completion, including provision for signature by an exporter's authorized agent having knowledge of the relevant facts.

6. In the case of articles described in § 10.213(a)(1), interim § 10.215(a) provided for the inclusion of the symbol "D" as a prefix to the applicable Chapter 98, HTSUS, subheading (that is subheading 9802.00.80) as the means for making the required written declaration on the entry documentation. This procedure was adopted because, contrary to the case of the other articles described in § 10.213(a), no unique HTSUS subheading had been identified for the articles covered by § 10.213(a)(1) when the interim regulations were published. A unique HTSUS subheading now exists for those articles (that is, subheading 9802.00.8042). Accordingly, § 10.215(a) is revised in this document to prescribe the same entry documentation declaration procedure for all articles described in § 10.213, that is, inclusion of the HTSUS Chapter 98 subheading under which the article is classified.

7. In § 10.216(b)(4)(ii), the cross-reference to "§ 10.214(c)(14)" is changed to read "§ 10.214(c)(15)" to reflect the addition of the provision regarding signature by the exporter or the exporter's authorized agent.

8. Finally, in § 10.217(a)(2) and (a)(3), the words "in a beneficiary country" are removed in recognition of the fact that verification of documentation and other information regarding country of origin and verification of evidence regarding the use of U.S. materials might take place outside a beneficiary country, for example, within the United States.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Cus-

toms, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment and United States tariff changes proclaimed by the President under the African Growth and Opportunity Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this interim rule has previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) under OMB control number 1515–0224.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Part 10 of the Customs Regulations (19 CFR Part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * * * *

2. In § 10.212, the definition of "knit-to-shape" and the definition of "wholly formed" are removed and new definitions of "knit-to-shape articles" and "knit-to-shape components" and "wholly formed fabrics" and "wholly formed on seamless knitting machines" and "wholly formed yarns" are added in appropriate alphabetical order to read as follows:

§ 10.212 Definitions.

* * * * * * *

Knit-to-shape articles. "Knit-to-shape," when used with reference to sweaters or other apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is "knit-to-shape."

Knit-to-shape components. "Knit-to-shape," when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape containing a self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

* * * * * * *

Wholly formed fabrics. "Wholly formed," when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in the United States or in one or more beneficiary countries.

Wholly formed on seamless knitting machines. "Wholly formed on seamless knitting machines," when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by

feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country.

3. In § 10.213:

a. Paragraphs (a)(1) through (a)(5) are revised;

b. Paragraph (a)(7) is amended by removing the words "18.5 microns" and adding, in their place, the words "21.5 microns";

c. Paragraph (a)(8) is revised;

d. A new paragraph (a)(11) is added; and

e. Paragraph (b)(2) is redesignated as paragraph (b)(3) and a new paragraph (b)(2) is added.

The revisions and additions read as follows:

§ 10.213 Articles eligible for preferential treatment.

(a) * * *

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if

those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States).

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating either in the United States or in one or more beneficiary countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating either in the United States or in one or more beneficiary countries, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make the articles, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

* * * * * * *

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabrics or yarn that is not formed in the United States or a beneficiary country, provided that apparel articles of those fabrics or yarn would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico;

* * * * * * *

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section.

(b) * * *

(2) *"Cost" and "value" defined.* The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (b)(1) of this section means:

(i) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (b)(2)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

* * * * * * *

4. In § 10.214, paragraphs (b) and (c) are revised to reads as follows:

§ 10.214 Certificate of Origin.

* * * * * * *

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

AFRICAN GROWTH AND OPPORTUNITY ACT
TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name and Address:	3. Importer Name and Address:
2. Producer Name and Address:	4. Preference Group:
5. Description of Article:	

Group	Each description below is only a summary of the cited CFR provision.	19 CFR
1–A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1)
2–B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2)
3–C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. *and* beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries or in beneficiary countries *and* the United States.	10.213(a)(3) or 10.213(a)(11)

Group	Each description below is only a summary of the cited CFR provision.	19 CFR
4–D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the United States and/or one or more beneficiary countries.	10.213(a)(4)
5–E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5)
6–F	Knit-to-shape sweaters in chief weight of cashmere.	10.213(a)(6)
7–G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7)
8–H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9)
9–I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.213(a)(10)

6. U.S./African Fabric Producer Name and Address:	7. U.S./African Yarn Producer Name and Address:
	8. U.S. Thread Producer Name and Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply or Designated Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17. Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10 should be completed only when the preference group identifier "8" and/or "H" is inserted in block 4 and should state the name of the fabric or yarn that is in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The "to" date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

5. In § 10.215, paragraph (a) is revised to read as follows:

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must

make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

* * * * * * *

6. In § 10.216, the second sentence of paragraph (b)(4)(ii) is amended by removing the reference "§ 10.214(c)(14)" and adding, in its place, the reference "§ 10.214(c)(15)".

7. In § 10.217, paragraphs (a)(2) and (a)(3) are amended by removing the words "in a beneficiary country".

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 25, 2003.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 21, 2003 (68 FR 13820)]

Bureau of Customs and Border Protection

General Notice

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 2–2003)

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of January 2002. The last notice was published in the CUSTOMS BULLETIN on March 12, 2003.

Corrections or information to update files may be sent to Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regualtions and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572–8710.

Dated: March 14, 2003.

GEORGE FREDERICK MCCRAY, ESQ.
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

03/03/2003 10:05:40

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN FEBRUARY 2003

PAGE 1
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0300004	20030211	20230211	TOY ITEM #000026	TOY CENTURY INDUSTRIAL CO. LTD.	N
COP0300005	20030212	20230212	PYTHON BLACK & WHITE	KATHRINE BAUMANN	N
COP0300006	20030213	20230213	STAR WARS	TWENTIETH CENTURY-FOX FILM CORP.	N
COP0300007	20030213	20230213	STAR WARS: EPISODE V - THE EMPIRE STRIKES BACK	LUCASFILM, LTD.	N
COP0300008	20030213	20230213	STAR WARS: EPISODE II, ATTACK OF THE CLONES	LUCASFILM, LTD.	N
COP0300009	20030220	20230220	U12733	WEAVE CORPORATION	N
COP0300010	20030220	20230220	U13720	WEAVE CORPORATION	N
COP0300011	20030227	20230227	KID INVENTOR CREATIVE ELECTRONICS KIT - VERSATILE	SHINET CORPORATION	N
COP0300012	20030227	20230227	KUNG FU KIDZ	MASTER TOYS & NOVELTIES INC.	N
SUBTOTAL RECORDATION TYPE			#		
TMK0300040	20030206	20101226	KANGOL	KANGOL LIMITED	N
TMK0300041	20030206	20120508	KANGOL MONTY AND DESIGN (STYLIZED X)	KANGOL LIMITED	N
TMK0300042	20030206	20050527	KANGOL	KANGOL LIMITED	N
TMK0300043	20030206	20040131	SPITFIRE	KANGOL LIMITED	N
TMK0300044	20030206	20040807	TROPICAP	KANGOL LIMITED	N
TMK0300045	20030206	20040807	X (STYLIZED)	KANGOL LIMITED	N
TMK0300046	20030206	20051126	KANGOL AND DESIGN (KANGAROO)	KANGOL LIMITED	N
TMK0300047	20030206	20071013	VENTAIR	KANGOL LIMITED	N
TMK0300048	20030206	20080531	KANGOL	KANGOL LIMITED	N
TMK0300049	20030206	20080210	DESIGN ONLY	KANGOL LIMITED	N
TMK0300050	20030206	20080317	KANGOL AND DESIGN (STYLIZED X)	KANGOL LIMITED	N
TMK0300051	20030206	20080519	KANGOL AND DESIGN (KANGAROO)	KANGOL LIMITED	N
TMK0300052	20030206	20080707	KANGOL AND DESIGN (STYLIZED X)	KANGOL LIMITED	N
TMK0300053	20030206	20090330	KANGOL AND DESIGN (KANGAROO)	KANGOL LIMITED	N
TMK0300054	20030206	20090914	KANGOL AND DESIGN (KANGAROO)	KANGOL LIMITED	N
TMK0300055	20030206	20091005	KANGOL AND DESIGN (STYLIZED X)	KANGOL LIMITED	N
TMK0300056	20030206	20111218	KANGO AND DESIGN (STYLIZED X)	KANGOL LIMITED	N
TMK0300057	20030210	20120609	GLOCK	GLOCK, INC.	N
TMK0300058	20030210	20120924	NEWPORT LIGHTS MENTHOL BOX(& DESIGN)	LORILLARD LICENSING COMPANY, LLC	Y
TMK0300059	20030210	20060423	FREE COUNTRY	FREE COUNTRY LTD	Y
TMK0300060	20030210	20100725	FREE TECH	FREE COUNTRY LTD	N
TMK0300061	20030210	20120903	NEWPORT LIGHTS SLIM 120'S(& DESIGN)	LORILLARD LICENSING COMPANY, LLC	Y
TMK0300062	20030210	20120917	NEWPORT SLIM 120'S(DESIGN)	LORILLARD LICENSING COMPANY, LLC	Y
TMK0300063	20030211	20120616	BVLGARI	BULGARI S.P.A.	N
TMK0300064	20030211	20120616	BVLGARI	BULGARI S.P.A.	N
TMK0300065	20030211	20120428	FERRAGAMO(& BUCKLE DESIGN)	SALVATORE FERRAGAMO ITALIA S.PA	N
TMK0300066	20030211	20120622	DUNHILL(& DESIGN)	DUNHILL TOBACCO OF LONDON LTD.	N
TMK0300067	20030211	20050627	NBA LEGO	NBA PROPERTIES INC.	N
TMK0300068	20030211	20120825	S WORKS (STYLIZED)	SPECIALIZED BICYCLE COMPONENTS	N
TMK0300069	20030212	20101010	DESIGN(CONFIGURATION OF EYEGLASS FRAME)	OAKLEY, INC.	N
TMK0300070	20030212	20120526	AT&T AND DESIGN	AT&T CORPORATION	N
TMK0300071	20030212	20120716	AIR DISK	IN-STRIDE, INC.	N
TMK0300072	20030212	20060109	SURESTEP	JOHNSON & JOHNSON	N
TMK0300073	20030212	20080616	FASTTAKE	JOHNSON & JOHNSON	N
TMK0300074	20030212	20120212	ONE TOUCH ULTRA	JOHNSON & JOHNSON	N
TMK0300075	20030212	20080419	ONE TOUCH	JOHNSON & JOHNSON	N
TMK0300076	20030212	20060513	NAT ROBBINS	FINANZ ST. HONORE' B.V.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0300077	20030212	20121024	EFFER-GRIP	WARNER-LAMBERT COMPANY	N
TMK0300078	20030212	20100430	DESIGN(FLYSWATTER BLADE)	LAIDLAW CORPORATION	N
TMK0300079	20030212	20121116	DESIGN(HORSESHOE)	ETIENNE AIGNER, INC.	N
TMK0300080	20030212	20121012	Y SHAPED DESIGN OF A SPORT BALL	ADIDAS INTERNATIONAL B.V.	N
TMK0300081	20030213	20121028	DAVID YURMAN	YURMAN DESIGN INC.	N
TMK0300082	20030213	20051226	GRIND KING	DONALD CASSEL	N
TMK0300083	20030213	20110527	WHITE TAIL	JAMES HOLLIS GLOVER	N
TMK0300084	20030213	20110617	HAND MADE WHITE TAIL CUTLERY & DESIGN	JAMES HOLLIS GLOVER	N
TMK0300085	20030213	20101128	DESIGN (ENCIRCLED STAG HEAD)	JAMES HOLLIS GLOVER	N
TMK0300086	20030213	20121222	SPICE BARN	SPICE BARN, INC.	N
TMK0300087	20030213	20121116	EATON (STYLIZED)	EATON CORPORATION	N
TMK0300088	20030213	20110911	STAR WARS	LUCAS LICENSING LTD.	N
TMK0300089	20030213	20110911	STAR WARS	LUCAS LICENSING LTD.	N
TMK0300090	20030219	20080421	AG SILVER ACTIVE GEAR WITH DESIGN	PRINCETON SPORTS PROJECT, L.L.C.	N
TMK0300091	20030219	20121006	TOYOTA	TOYOTA JIDOSHA KABUSHIKI KAISHA	N
TMK0300092	20030224	20080317	MOUNTAIN FLEECE	A & F TRADEMARK, INC.	N
TMK0300093	20030224	20070909	MOUNTAIN FLEECE	A & F TRADEMARK, INC.	N
TMK0300094	20030224	20090208	A & F CO (STYLIZED)	A & F TRADEMARK, INC.	N
TMK0300095	20030224	20111030	8	A & F TRADEMARK, INC.	N
TMK0300096	20030224	20110403	ABERCROMBIE PARATROOPS	A & F TRADEMARK, INC.	N
TMK0300097	20030224	20100104	ABERCROMBIE	A & F TRADEMARK, INC.	N
TMK0300098	20030224	20060910	ABERCROMBIE & FITCH	A & F TRADEMARK, INC.	N
TMK0300099	20030224	20111023	ABERCROMBIE & FITCH	A & F TRADEMARK, INC.	N
TMK0300100	20030224	20100222	AFCO	A & F TRADEMARK, INC.	N
TMK0300101	20030224	20120101	1892	A & F TRADEMARK, INC.	N
TMK0300102	20030224	20110710	GYM ISSUE	A & F TRADEMARK, INC.	N
TMK0300103	20030224	20080519	A TECH AND DESIGN	A & F TRADEMARK, INC.	N
TMK0300104	20030224	20111106	AF	A & F TRADEMARK, INC.	N
TMK0300105	20030224	20120115	A & F	A & F TRADEMARK, INC.	N
TMK0300106	20030227	20120407	DCI	ACUSHNET COMPANY	N
TMK0300107	20030227	20120502	TITLEIST	ACUSHNET COMPANY	N
TMK0300108	20030227	20121215	KODAK	EASTMAN KODAK COMPANY	N
TMK0300109	20030227	20060130	KIOTI	DAEDONG INDUSTRIAL CO., LTD.	N
TMK0300110	20030227	20070824	KIOTI AND DESIGN	DAEDONG INDUSTRIAL CO., LTD.	N
TMK0300111	20030228	20120825	BJI	CANON KABUSHIKI KAISHA	N
SUBTOTAL RECORDATION TYPE		72			
TNM0300002	20030225	99999999	REVOLUTIONARY PRODUCTS, INC.	REVOLUTIONARY PRODUCTS, INC.	N
SUBTOTAL RECORDATION TYPE		1			
TOTAL RECORDATIONS ADDED THIS MONTH		82			

Bureau of Customs and Border Protection

Proposed Rulemakings

19 CFR Parts 12 and 24

RIN 1515–AC93

PATENT SURVEYS

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to eliminate patent surveys. After careful review, Customs questions the worthiness of continuing the patent survey program given lack of demand for the program, stemming in part from the program's apparent lack of effectiveness within the current statutory scheme, and other changed circumstances.

DATES: Written comments must be received on or before May 19, 2003.

ADDRESSES: Written comments may be submitted to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20229. Submitted comments may be inspected at the U.S.Customs Service, 799 9th Street, Washington, D.C., during regular business hours. Arrangements to inspect comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: George McCray, Branch Chief, Intellectual Property Rights Branch (202) 927–2330.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337; hereafter, section 1337), concerning unfair practices in import trade, it is unlawful to, among other things, import merchandise into the United States that infringes a valid and enforceable United States patent. Under the statute, the International Trade Commission (the Commission), after

conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) The statute also authorizes the Commission, under certain circumstances, to issue cease and desist orders, impose civil penalties, and order seizure and forfeiture relative to unlawful acts under the statute.

Customs plays a supporting role with respect to patent infringement cases under section 1337. For example, where the Commission has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, Customs will refuse entry of the merchandise covered by the order after notification by the Commission (see 19 CFR 12.39). In addition to enforcing Commission exclusion orders, Customs enforces Commission seizure/forfeiture orders (19 U.S.C. 1337(i)(2)) and certain court orders.

Patent Surveys

In 1956, while under no statutory mandate to do so, Customs promulgated a regulation designed to assist patent holders in obtaining information they would need to seek action by the Commission under section 1337. In Treasury Decision (T.D.) 54087, published in the Federal Register (21 FR 3267) on May 18, 1956, Customs amended § 24.12(a) of the Customs Regulations by adding paragraph (3), under which Customs would issue the names and addresses of importers of articles appearing to infringe a registered patent. The T.D. explained that the purpose of the new provision was to assist the owner of a registered patent in obtaining data upon which to file a complaint under section 1337 charging unfair methods of competition and unfair acts in the importation of merchandise infringing the patent. The provision required an application by the patent owner and set forth appropriate fees.

In T.D. 56137, published in the Federal Register (29 FR 4909) on April 8, 1964, Customs amended Part 12 of the regulations to add new section 12.39a to prescribe the procedure and requirements for obtaining the names and addresses of importers of merchandise appearing to infringe a patent (thereby transferring authority for the procedure from § 24.12(a)(3)). The new section referred to the procedure as a patent survey and provided patent survey requestors three survey period options varying in length of time: 2, 4, and 6 months. The fees for patent surveys remained under § 24.12(a)(3).

Changed Circumstances

Over the years, Customs has continued to perform patent surveys under § 12.39a, but changed circumstances call into question the effectiveness of the patent survey process and the ability of Customs to continue to provide the manpower and resources required. Customs, therefore, has had to reconsider the viability of the program.

In 1956, when the above mentioned program was introduced, Customs processed just over a million entries. Because the volume of imports has exploded since 1956, Customs now receives over 23 million entries per year (based on 2001 statistics). At the same time, as a result

of subsequent changes in Customs law and practice, the old system in which Customs officers were responsible for completing the processing of each entry has been replaced with what, in practice, is a self-assessment system based on electronic reporting without paper invocies.

Effectiveness of the Patent Survey Program

The patent survey seeks to identify importers who may be importing merchandise that appears to infringe a patent. After initial approval of a survey request (application), Customs determines which tariff provisions may apply to particular patented merchandise, a task complicated by the fact that patented articles are often new or novel commodities. Often, these identified tariff provisions are broad or basket provisions, with the broad provisions covering several similar articles and the basket provisions covering a wide breadth of articles that do not fit under more specific subheadings. Thus, searching for merchandise that appears to infringe the patent often produces overbroad results. These overbroad results lead to identifying importers who in fact do not import merchandise appearing to infringe the patent at issue. These searches are of questionable value to the patent owner and do not produce results that justify the required use of Customs resources.

Further evidence of the limited value of the patent survey program is demonstrated by the fact that Customs processes relatively few patent survey requests (although not a data element routinely tracked, research indicates about 10 requests processed per year). While the survey requests received present the problems discussed in this document (time-consuming process, overbroad results, questionable value of results, competing mission priorities), their few number call into question the value of the program. A greater number of survey requests would suggest a greater need among the importing public and a more legitimate basis for Customs investment of time and effort. The apparent lack of need is another reason to discontinue the program.

Unappealing Options

Customs recognizes that today it faces a situation with unappealing options. Recognizing the ineffectiveness of the program and the lack of demand suggests discontinuing the program. Making the program more effective, in the hope of generating new demand, would require the commitment of scarce resources. Moreover, Customs would have to increase the cost of patent surveys dramatically to cover the expense of a stepped up program. Customs believes that intensifying the program is not possible operationally or economically.

The Statute—19 U.S.C. 1337

Finally, Customs notes that section 1337 does not mandate that Customs perform patent surveys. An examination of the general scheme of section 1337 shows that the statute places primary authority in the Commission, rather than Customs, to enforce its provisions. The Commission is charged with the responsibility to conduct investigations and make determinations regarding violations and sanctions under the sta-

tute. Customs is not authorized to take any action regarding apparently patent-infringing merchandise without the Commission first taking action or without receiving a notice, request, or instruction from the Commission, a clearly secondary role.

Thus, the promulgation of Customs patent survey regulation (first in § 24.12(a)(3) and then in § 12.39a), though intended to support section 1337, is not rooted in explicit statutory authority. Rather, the regulatory program was initiated in the exercise of agency discretion under the general authority of 19 U.S.C. 66 and 1624.

CONCLUSION

Based on all the foregoing that calls into question the continued viability of the Customs patent survey program under § 12.39a, for reasons relating to effectiveness of the program, burden on Customs manpower and systems, the impracticality of intensifying the program, and ambiguous statutory authority, Customs is considering discontinuing the program. Thus, this document proposes removing § 12.39a from the Customs Regulations and making conforming changes to § 24.12(a) by removing paragraph (3).

COMMENTS

Before adopting as final the proposed removal of § 12.39a, consideration will be given to any written comments timely submitted to Customs. Customs requests that commenters opposed to removal of the regulation include in their comments suggestions to maintain the patent survey program that address Customs concerns regarding the program's effectiveness. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4:30 p.m. at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the amendments to the Customs Regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. The regulation would merely discontinue the patent survey procedure. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

LIST OF SUBJECTS

19 CFR Part 12

Entry of merchandise, Customs duties and inspection, Fees assessment, Imports, Patents, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Imports, Reporting and recordkeeping requirements.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Parts 12 and 24 of the Customs Regulations (19 CFR Parts 12 and 24) are proposed to be amended as follows:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66; 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

* * * * * * *

2. It is proposed to amend Part 12 by removing § 12.39a.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Haromonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * * * *

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

* * * * * * *

2. It is proposed to amend § 24.12 by removing paragraph (a)(3).

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 28, 2003.
TIMOTHY E. SKUD,
Assistant Secretary of the Treasury.

[Published in the Federal Register, March 20, 2003 (68 FR 13636)]

19 CFR Part 113

RIN 1515–AC44

IMPORTATION AND ENTRY BOND CONDITIONS REGARDING OTHER AGENCY DOCUMENTATION REQUIREMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that Customs has decided to withdraw a proposal to amend the Customs Regulations regarding the bond condition on the basic entry and importation bond requiring the principal to furnish Customs with any document or evidence required to be submitted to Customs by law or regulation. The proposal would have expanded this bond condition to require the principal to furnish to other Government agencies any document or evidence required in connection with the importation/entry process required to be submitted to those agencies under the laws or regulations of those agencies.

DATE: As of March 20, 2003, the proposed rule published on August 6, 1999 (64 FR 42872) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 572–8750.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 6, 1999, Customs published a document in the Federal Register (64 FR 42872) proposing to amend the Customs Regulations pertaining to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. The proposed amendment would have extended this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence required to be submitted to other Government agencies under laws and regulations of those other agencies.

The impetus for the proposal was that another agency asked Customs whether the Customs bond could be used to provide a consequence for the failure to provide a specific document to that agency when that agency required the document upon the importation of certain articles. Rather than issuing a narrow proposed rule governing the presentation of the specific document, Customs proposed to amend the provisions of the basic importation and entry bond to allow for the assessment of liquidated damages if there is a failure to provide any document to other

Government agencies in the time period prescribed under the laws and regulations of those other agencies.

Comments on the proposed amendment to the Customs Regulations were solicited.

Customs received six comments on the proposed amendment to the regulation. All of the comments were strongly opposed to the implementation of the proposed amendment. They stated that the proposed amendment was far too broad and that it allowed for liquidated damages for unidentified violations of unknown laws administered by unknown agencies.

Customs has carefully considered the comments received, further reviewed the matter, and agrees with the commenters. Accordingly, Customs is withdrawing the proposal it published on August 6, 1999.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: February 25, 2003.

TIMOTHY E. SKUD,
Assistant Secretary of the Treasury.

[Published in the Federal Register, March 20, 2003 (68 FR 13638)]

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10278

Chief Judge

Gregory W. Carman

Judges

Jane A. Restani
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Decisions of the United States Court of International Trade

(Slip Op. 03–26)

WONDERFUL CHEMICAL INDUSTRIAL, LTD., KWONG FAT HONG DYE-CHEMICALS, LTD., BEIJING DYESTUFFS PLANT, CHINA JIANGSU INTERNATIONAL ECONOMIC TECHNICAL COOPERATION CORP., CHINA NATIONAL CHEMICAL CONSTRUCTION JIANGSU CO., CHONGQING CHUANRAN CHEMICALS GENERAL PLANT, CHONGQING DYESTUFF IMPORT & EXPORT UNITED CORP., HEBEI JINZHOU IMPORT & EXPORT CORP., HEBEI WUQIANG CHEMICAL FACTORY, JIAHUI CHEMICAL WORKS, JIANGSU TAIFENG CHEMICAL INDUSTRY CO., SHANGHAI YONGCHEN INTERNATIONAL TRADING CO., LTD., SINOCHEM HEBEI IMPORT & EXPORT CORP., TAIXING TAIFENG DYESTUFF CO., LTD., TIANJIN HONGFA GROUP CO., AND WUHAN TIANJIN CHEMICALS IMPORTS & EXPORTS CORP., LTD., PLAINTIFFS *v.* UNITED STATES, DEFENDANT, AND BUFFALO COLOR CORP., DEFENDANT-INTERVENOR

Court No. 00–07–00369

[Department of Commerce's Final Determination is sustained.]

(Dated March 12, 2003)

Aitken Irvin Berlin & Vrooman, LLP (Bruce Aitken) for plaintiffs.

Robert D. McCallum, Jr., Assistant Attorney General, *David M. Cohen*, Director, *Lucius B. Lau*, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Philip J. Curtin*, Attorney, Office of the Chief Counsel, United States Department of Commerce, for defendant.

Collier Shannon Scott, PLLC (Michael R. Kershow and *Paul C. Rosenthal)* for defendant-intervenor.

MEMORANDUM OPINION AND ORDER

GOLDBERG, *Senior Judge:* In this action, the Court reviews a challenge to the Department of Commerce's ("Commerce") final determination to impose an antidumping ("AD") order covering certain producers of synthetic indigo from the People's Republic of China ("PRC"). *See Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 Fed. Reg. 25706 (May 3, 2000) *("Final Determination").*

Plaintiffs, Wonderful Chemical Industrial, Ltd. ("Wonderful"), Kwong Fat Hong Dye-Chemicals, Ltd. ("Kwong Fat"), Beijing Dyestuffs Plant, China Jiangsu International Economic Technical Cooperation Corporation, China National Chemical Construction Jiangsu Company, Chongqing Chuanran Chemicals General Plant, Chongqing Dyestuff Import & Export United Corporation, Hebei Jinzhou Import & Export Corporation, Hebei Wuqiang Chemical Factory, Jiahui Chemical Works, Jiangsu Taifeng Chemical Industry Co., Shanghai Yongchen International Trading Company, Ltd., Sinochem Hebei Import & Export Corporation, Taixing Taifeng Dyestuff Co., Ltd., Tianjin Hongfa Group Co., and Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd. (collectively "Plaintiffs"), are PRC-based producers of the subject merchandise and seek relief from Commerce's action under USCIT Rule 56.2. Plaintiffs argue that the *Final Determination* was neither in accordance with law nor supported by substantial evidence.

The Court exercises jurisdiction over this matter pursuant to 28 U.S.C. § 1581(c) (2000). For the reasons that follow, the Court sustains Commerce's *Final Determination.*

I. BACKGROUND

On or about June 28, 1999, domestic producers of synthetic indigo, including defendant-intervenor Buffalo Color Corporation ("Buffalo"), and the unions representing their workers filed antidumping duty petitions with Commerce and the International Trade Commission. The petition alleged that the domestic industry was materially injured or threatened with material injury due to imports of certain synthetic indigo sold at less than fair market value from the PRC.

On July 28, 1999, Commerce initiated its antidumping investigation of possible producers/exporters of synthetic indigo. *Notice of Initiation of Antidumping Duty Investigation: Synthetic Indigo from the People's Republic of China,* 64 Fed. Reg. 40831 (July 28, 1999). Due to limited resources, Commerce limited the number of mandatory respondents in the investigation to the two largest producers/exporters of synthetic indigo, Wonderful and Kwong Fat. *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China,* 64 Fed. Reg. 69723, 697925 (Dec. 14, 1999) *("Preliminary Determination").* Wonderful and Kwong Fat are exporters of synthetic indigo based in the PRC and Hong Kong, respectively. The focused investigation was permissible under 19 U.S.C. § 1677f–1(c)(2).[1]

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[1] 19 U.S.C. § 1677f–1(c)(2) permits Commerce to limit its investigation to the largest producers if "it is not practicable to make individual weighted average dumping margin determinations. * * * because of the large number of exporters or producers involved in the investigation or review." In such cases "the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to. * * * exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined." *Id.*

Upon further analysis, Commerce shifted its investigation from Kwong Fat to Tianjin Hongfa pursuant to 19 U.S.C. § 1677a(a).[2] Tianjin Hongfa is a PRC-based trading company. Specifically, Commerce examined whether Tianjin Hongfa sold the subject merchandise to Kwong Fat with the knowledge that the merchandise was destined for export to the United States.

On December 14, 1999, Commerce issued a preliminary determination. *Preliminary Determination,* 64 Fed. Reg. at 69297. In its *Preliminary Determination,* Commerce found that Tianjin Hongfa knew or should have known that the merchandise was for export to the United States at the time of sale.

Based on that finding, Commerce, pursuant to 19 U.S.C. § 1677b, calculated the dumping margin to determine if Tianjin Hongfa sold its exports at less than fair market value. *Id.* at 69729. Commerce calculated the dumping margin using surrogate values from Daurala, an Indian-based exporter of phenlyglycine. Phenlyglycine is the primary chemical used in the production of synthetic indigo. Commerce selected Daurala because India is a country that Commerce considers economically comparable to the PRC and because no data was available from a synthetic indigo producer in any other economically comparable country. *Id.* at 69728. Wonderful offered surrogate values from Atul and Traspek, two Indian-based producers of various chemicals including phenylglycine. Commerce claims that it rejected the Atul and Transpek data on the grounds that departmental practice is to use financial data that is more narrowly limited to a producer of comparable merchandise.

Using surrogate values from Daurala, Commerce calculated a dumping margin of 25 percent. Based on that data, Commerce stated in the *Preliminary Determination* that it had reasonable grounds to believe that critical circumstances existed with respect to synthetic indigo from Plaintiffs. *Id.* at 69725.

As defined by 19 U.S.C. § 1673b(e), critical circumstances exist if Commerce has reasonable grounds to believe that:

> (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or
>
> (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value; and
>
> (B) there have been massive imports of the subject merchandise over a relatively short period of time.

19 U.S.C. § 1673b(e).

Based on its finding of critical circumstances under subsections (A)(ii) and (B), Commerce issued its final determination on May 3, 2000. *Final Determination,* 65 Fed. Reg. at 25706. Subsequently, Buffalo petitioned Commerce for a recalculation of the dumping margins on the grounds

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[2] 19 U.S.C. § 1677a(a) provides that "export price is determined by the price at which the subject merchandise is first sold before the date of importation by the producer or exporter of the subject merchandise outside of the United States * * * to an unaffiliated purchaser for exportation to the United States."

that Commerce failed to consider other profits of Plaintiffs. Upon reconsideration, prompted by Buffalo's petition, Commerce amended the dumping margins to account for profits not included in its original calculation. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Synthetic Indigo From the People's Republic of China,* 65 Fed. Reg. 37961 (June 19, 2000).

Plaintiffs appeal the Final Determination on three grounds. First, Plaintiffs appeal Commerce's decision to treat Tianjin Hongfa as an exporter. Plaintiffs argue that Commerce incorrectly found that Tianjin Hongfa had the requisite knowledge of the final destination of the synthetic indigo it sold to Kwong Fat. Plaintiffs also argue that Tianjin Hongfa was an agent of Kwong Fat, rather than an exporter, based on the definitions provided by 19 U.S.C. § 1677(13). Second, Plaintiffs argue that Commerce's use of surrogate values from Daurala produced aberrational results. Third, Plaintiffs claim that Commerce improperly found the existence of critical circumstances based on the miscalculation of a 25 percent dumping margin.

There are two issues on appeal: (1) whether Commerce's determination to treat Tianjin Hongfa as an exporter was proper and (2) whether Commerce's use of surrogate values from Daurala was proper.[3] Commerce's Final Determination with respect to both issues is sustained.

II. Standard of Review

The Court will sustain Commerce's *Final Determination* if it is supported by substantial evidence on the record and is otherwise in accordance with law. *See* 19 U.S.C. § 1516(b)(1)(B) (1994). To determine whether Commerce's interpretation of a statute is in accordance with law, the Court applies the two-prong test set forth in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). First, the Court must determine "whether Congress has directly spoken to the precise question at issue." *See id.* at 842. The Court does so by looking to the statute's text to ascertain Congress's purpose and intent. *Timex V.I., Inc. v. United States,* 157 F.3d 879, 881 (Fed. Cir. 1998). If Congress's intent is unascertainable and the statute is either silent or ambiguous on the question at issue, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron,* 467 U.S. at 843. Thus, the reviewing court "is obliged to accept the agency's position if Congress has not previously spoken to the point at issue and the agency's interpretation is reasonable." *United States v. Mead Corp.,* 533 U.S. 218, 229 (2001).

With respect to factual findings, the Court will uphold the agency's factual findings if they are supported by substantial evidence. *Koyo Seiko Co. v. United States,* 1998 U.S. App. LEXIS 17524 (Fed. Cir. 1998).

[3] Plaintiffs' third argument on appeal challenges Commerce's finding of the existence of critical circumstances. Plaintiffs argue that Commerce's finding of critical circumstances was improper since it was based on the calculation of a dumping margin that exceeded 25 percent. Plaintiffs' sole argument is that Commerce's reliance on surrogate values from Daurala resulted in a miscalculation of the dumping margin at 25 percent. *See* Pl's Reply Br. in Opp. to Def's Briefs at 8. Because the Court has rejected Plaintiffs' challenge to Commerce's use of surrogate values from Daurala, it is unnecessary to address this issue any further.

Thus, the Court must sustain Commerce's factual determinations as long as they are reasonable and supported by the record as a whole, even if there is some evidence that detracts from the agency's conclusions. *See Atlantic Sugar, Ltd. v. United States*, 2 Fed. Cir. (T) 130, 137, 744 F.2d 1556, 1563 (1984).

III. Discussion

A. Commerce's determination to treat Tianjin Hongfa as an exporter

Plaintiffs appeal Commerce's decision to treat Tianjin Hongfa as an exporter. Plaintiffs argue that Tianjin Hongfa does not fall within the meaning of the term "exporter" as used by 19 U.S.C. § 1677(13) and that Tianjin Hongfa lacked knowledge that the United States was the final destination of the exports. Thus, Tianjin Hongfa lacked the requisite knowledge to pass Commerce's "knowledge test," and, therefore, was not an exporter but rather Kwong Fat's "agent" as defined by Section 1677(13).

Since Section 1677(13) was repealed in 1994, it is no longer applicable; the statute remains silent as to what constitutes an individual exporter or producer. *AK Steel Corp. v. United States*, 22 CIT 1070, 1079, 34 F. Supp. 2d 756, 764 (1998). In any event, the parties do not dispute Commerce's application of the knowledge test to determine Tianjin Hongfa's status. Therefore, the Court will not reach the issue of the appropriateness of the application of the knowledge test. *See Princess Cruises, Inc. v. United States*, 201 F.3d 1352, 1355 (Fed. Cir. 2000) (stating that the court need not address issues that are not raised in the briefs on appeal). Thus, the Court assesses the parties' appeal of Commerce's finding of Tianjin Hongfa's status as an exporter in light of their acceptance of the knowledge test.

1. Definition of the Knowledge Test

Commerce has established and applied a "knowledge test" for purposes of determining whether various parties involved in importing and exporting goods are subject to antidumping laws.

A producer passes the knowledge test if the "producer knew or had reason to know at the time of sale that the goods were for export to the United States." Statement of Administrative Action Accompanying The Trade Agreements Act of 1979, H.R. Rep. No. 4537, 388, 411, reprinted in 1979 U.S.C.A.N. 665, 682. Application of the knowledge test has been permitted in various contexts. *See L.G. Semicon Co., Ltd. v. United States*, 23 CIT 1074 (1999) (approving Commerce's application of the knowledge test to determine whether plaintiff-importers were subject to antidumping duties); *see also NSK Ltd. v. Koyo Seiko Co.*, 190 F.3d 1321 (Fed. Cir. 1999) (upholding the use of the knowledge test to determine whether plaintiff was a "reseller" and subject to an antidumping duty); *Shieldalloy Metallurgical Corp. v. United States*, 20 CIT 1362, 947 F. Supp. 525 (1996) (upholding the use of the knowledge test to calculate foreign market value of plaintiff's exports). In determining whether the producer knew or should have known that the subject mer-

chandise would be exported, this court has held that Commerce need not find that the producer had actual knowledge of the final destination of its exports. *Allegheny Ludlum Corp. v. United States,* 24 CIT ____, ____, 215 F. Supp. 2d 1322, 1331 (2000). This is because, "'under those circumstances, it would be extremely difficult for Commerce to ever conclude that a respondent knew sales were for export[.] * * * The only way to determine actual knowledge is through an admission of the respondent.'" *Id.* at 1332 (quoting *INA Walzlager Schaeffler KG,* 21 CIT 110, 125, 957 F. Supp. 251, 263–64 (1997)). A requirement of the producer's actual knowledge would "eviscerate the acknowledged standard." *Allegheny Ludlum,* 215 F. Supp at 1332. Thus, constructive knowledge has been held sufficient to satisfy the knowledge test. *GSA, S.r.l. v. United States,* 23 CIT 920, 77 F. Supp. 2d 1349, 1355 (1999).

2. Application of the Knowledge Test

In *GSA,* the court upheld Commerce's determination that a producer knew that the exports at issue were destined for the U.S. when the following factors were present: (1) the producer prepared certificates that stated that the destination of the exports was the United States; (2) the packaging size was used exclusively for the United States; and (3) the producer prepared packages which stated the destination of the exports. *Id.*

Here, Commerce concluded that Tianjin Hongfa passed the knowledge test based on the following factors: (1) Tianjin Hongfa prepared the Certificates of Origin and Fumigation, both of which stated that the exports were bound for the United States,[4] and (2) Tianjin Hongfa reported in its questionnaire that it only sold synthetic indigo to Kwong Fat and knew that Kwong Fat only shipped synthetic indigo to the United States. *See Preliminary Determination,* 64 Fed. Reg. 69723, 69727. Thus, the fact that Kwong Fat took title to the exports before shipment did not detract from Tianjin Hongfa's knowledge of the exports' final place of destination.

In response to Plaintiff's agency argument, Commerce acknowledges that the general manager of Kwong Fat had been hired temporarily by Tianjin Hongfa to act as vice-manager. However, Commerce found "no clear evidence on the record that he is involved in the daily production and operation of Tianjin Hongfa, or that his role is anything other than that of an advisor." *Final Determination,* 65 Fed. Reg. at 25717. Commerce concluded that Tianjin Hongfa was not a mere "agent" of Kwong Fat, as Plaintiffs argue, but rather was an exporter within the meaning of 19 U.S.C. § 1677a(a). *Id.* at 25709.

The Court finds that Commerce acted reasonably in determining that Tianjin Hongfa knew or should have known that its products were bound for the United States. Tianjin Hongfa prepared, signed, and veri-

[4] The Certificate of Origin explicitly stated that the "country of destination [of the exports is] Charlotte, N.C., U.S.A and that the "means of transport and [the] route [were] by steamer [and] from Xingang, China to Charlotte, N.C., U.S.A." Certificate of Origin of the People's Republic of China, 0000033, 08/01/99. The Certificate of Fumigation also stated the exports' destination. Fumigation/Disinfection Certificate, Ministry of Agriculture of P.R. China, 0000031, Dec. 25, 1998.

fied two documents, the Certificates of Origin and Fumigation, which explicitly stated that the exports were destined for the United States. Additionally, Tianjin Hongfa verified other shipping arrangement documents, which plainly stated that the destination for the exports was the United States. *Preliminary Determination,* 64 Fed. Reg. at 69727. Finally, Tianjin Hongfa admitted to only selling synthetic indigo to Kwong Fat and admitting to having known that Kwong Fat sold synthetic indigo only to the United States. *Id.*

The Court finds that Commerce's application of the knowledge test and its resultant finding of Tianjin Hongfa's constructive or indirect knowledge is reasonable and supported by substantial evidence on the record. Accordingly, Commerce's determination that Tianjin Hongfa had the requisite knowledge and thus constituted an exporter is upheld. *See Ceramica Regiomontana, S.A. v. United States,* 10 CIT 399, 405, 636 F. Supp. 961, 966 (1986), *aff'd,* 5 Fed. Cir. (T) 77, 810 F.2d 1137 (1987).

B. Surrogate values from Daurala

Plaintiffs claim that Commerce erred in its calculation of the normal value of synthetic indigo by using costs of production and profits from Daurala, an Indian-based producer of phenylglycine. Phenylglycine is the primary chemical used in the production of synthetic indigo. Plaintiffs argue that the financial data from Daurala was inappropriate since Daurala was an inefficient producer and did not produce the same final product as Plaintiffs. Additionally, Plaintiffs claim that data from Atul and Transpek, other Indian-based producers of various chemicals including phenylglycine, provided a better basis for valuing the factors of production and profit. Commerce claims that since it could not find a producer of synthetic indigo, it used Daurala and rejected surrogate data from Atul and Transpek. It did so because Atul and Transpek produced a wider range of products than Plaintiffs and Daurala. Commerce's practice is to use financial data that is more narrowly limited to a producer of comparable merchandise. *Preliminary Determination,* 64 Fed. Reg. at 69723. Commerce rejects data based on a producer of a wider range of products when former data are available. *Id.* According to Commerce, the more narrowly limited data produces more representative results. *Id. See also Taiyuan Heavy Mach. Import & Export Corp. v. United States,* 23 CIT 701, 707 (1999) (approving Commerce's preference for and use of surrogate data that is product-specific).

Commerce is obligated to value the factors of production based on the "best available information" from market economy countries that are at a level of economic development comparable to that of the non-market economy country. Those values must be from a significant producer of "comparable" subject merchandise. *See* 19 U.S.C. § 1677b. Commerce is granted broad latitude and substantial discretion in choosing the information on which it relies. *Shandong Huarong Gen. Corp. v. United States,* 159 F. Supp. 2d 714, 718 (Ct. Int'l. Trade 2001). In *Shandong Huarong,* the court upheld Commerce's use of surrogate values from an Indian-based producer of HTS Category 7214.10.09 forged steel

("forged steel"), a product that was deemed comparable to the subject merchandise, steel bars. The court recognized that it was arguable that the forged steel was used in the production of the subject merchandise. *See id.* at 722. Yet the court upheld Commerce's surrogate values because "Congress has granted Commerce substantial discretion and has bound the Court to respect that discretion, even where the Court would have reached a different conclusion had this case been reviewed *de novo*." *Id.* at 723. Thus, the standard of review precludes a court from deciding whether the surrogate values used were the absolute best available in these circumstances. *Id.*

Likewise, based on the substantial discretion afforded Commerce in selecting the data on which it relies and the meaning of "best available information" in 19 U.S.C. § 1677b, Commerce's use of surrogate values from Daurala was reasonable. *See Shandong Huarong,* 159 F. Supp. 2d at 718. In doing so, the Court does not decide whether the surrogate value chosen by Commerce was the absolute best available information. The sole product produced by Daurala, phenylglycine, is considered the primary component used in the production of synthetic indigo. In addition, data from Atul and Transpek covered a wider range of products and therefore may have been less comparable to Plaintiffs' factors of production. Accordingly, Commerce's use of surrogate values from Daurala is upheld.

IV. Conclusion

For the aforementioned reasons, the Court (1) affirms Commerce's determination that Tianjin Hongfa had knowledge of the final destination of its exports and was an exporter; and (2) affirms Commerce's use of surrogate values from Daurala.

So ordered.

(Slip Op. 03–27)

FORMER EMPLOYEES OF QUALITY FABRICATING, INC., PLAINTIFFS *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 02–00522

[Motion to Dismiss DENIED.]

(Decided March 14, 2003)

Collier Shannon Scott, (John Brew and *Iva Smith)* for Plaintiffs.

Robert D. McCallum, Jr., Assistant Attorney General; *David M. Cohen*, Director; *Lucius B. Lau*, Assistant Director, *Victoria L. Strohmeyer*, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, for Defendant.

OPINION

WALLACH, *Judge:* Defendant, United States Department of Labor ("DOL"), filed a Motion to Dismiss for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 2636(d) (1994), because Plaintiffs brought their suit beyond the sixty-day statutory time period for commencing an action.[1] Plaintiffs, certain former employees of Quality Fabricating, Inc. ("Quality"), contest the decision of the Secretary of Labor denying North American Free Trade Agreement Transitional Adjustment Assistance ("NAFTA TAA") and seek equitable tolling of the statutory time limit. For the reasons discussed below, the Defendant's Motion to Dismiss is denied under the equitable tolling doctrine.

I. BACKGROUND

The facts are uncontroverted. On June 28, 2001, Plaintiffs mailed their petition for NAFTA TAA to the DOL. Defendant registered the petition on July 5, 2001, and designated it Petition #5051. Margaret Miller, a former employee of Quality, continuously checked the DOL website starting August 1, 2001.[2]

On October 9, 2001, Ms. Miller e-mailed the DOL regional office in Harrisburg, Pennsylvania, the e-mail address of which was provided on the website, to inquire about the petition. Ms. Miller explained that she was checking the website every day for the determination. She received a return e-mail on October 11, 2001, saying that "these things take time," but she was not advised that she should check or contact any other source. After receiving this e-mail, Ms. Miller contacted two Representatives from Congress, but received no response.

On November 7, 2001, Ms. Miller contacted the State of Pennsylvania Department of Labor Trade Adjustment Representative at the Pennsylvania CareerLink offices. She stated she had been checking the DOL website without result. The state employee assured her that she was do-

[1] Section 2636(d) states that "[a] civil action contesting a final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 * * * is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination."

[2] The homepage for the Department of Labor is found at http://www.doleta.gov.

ing everything she should and advised her to continue checking the DOL website for the determination. He said the DOL had not yet requested the information from Quality needed to send notifications regarding the determination, and it was therefore unlikely that she would receive notice anytime soon. He also said the DOL would send her a letter when it made the determination.

Ms. Miller then contacted a state legislator and requested help obtaining an answer from her U.S. Senator, and her Representative in the House. On November 21, 2001 she received a letter from the office of her Congresswoman, Melissa Hart, stating that the Quality Fabricating petition was still pending. On December 10, 2001, Ms. Miller again e-mailed the DOL regional office and was told that "these things take time."

On December 18, 2001, Ms. Miller visited the State of Pennsylvania's Department of Labor Trade Adjustment Representative, who checked the web site in her presence and told her that no determination had been made regarding eligibility. He told her again that the DOL had not yet requested the information necessary to send notifications regarding the determination.

Ms. Miller asked what more she could do to expedite a determination, and the representative gave her two pamphlets addressing benefits under NAFTA TAA.[3] Additionally, he gave her a telephone number for the DOL NAFTA TAA office in Washington D.C., and permitted her to call NAFTA TAA from his office. She left a message. No one returned her call.

From January through May 2002, Ms. Miller e-mailed the general Internet address for the DOL regional office in Harrisburg, Pennsylvania once a month to inquire about the petition. She received no response. On May 9, 2002, the DOL issued a negative eligibility determination for employees of Quality. It was published in the Federal Register *Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance,* 67 Fed. Reg. 35,140, 35,142 (May 17, 2002) ("Determination").

Ms. Miller first learned of the denial on July 15, 2002, when it appeared on the DOL website, back-dated to May 9, 2002. The notice also contained a hyperlink to a site which discussed appeal rights from a negative determination. That evening, she drafted a letter to the Clerk of Court of the United States Court of International Trade. On July 16, 2002, Ms. Miller, on behalf of Quality employees, sent the letter, via regular mail, requesting an appeal from the DOL's Determination. The Court received Ms. Miller's letter on July 22, 2002, and deemed it filed on that day.[4] Thus, Ms. Miller's letter was filed sixty-six days after the publication of the negative determination in the Federal Register.

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[3] The first pamphlet was titled "Transitional Adjustment Assistance Benefits," and the second was titled "Assistance for Workers Under the Trade Act of 1974."

[4] Ms. Miller was unaware of the filing requirements established by USCIT R. 5(e) that "[f]iling is completed when received, except that a paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested, shall be deemed filed as of the date of mailing."

II.

STANDARD OF REVIEW

The plaintiff has the burden of pleading and proving the requisite jurisdictional facts to establish this court's jurisdiction by a preponderance of the evidence. *See McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189, 56 S. Ct. 780, 80 L. Ed. 1135 (1936); *Elkem Metals Co. v. United States*, 44 F. Supp. 2d 288, 292 (CIT 1999).

III.

ARGUMENTS

Defendant argues that this court lacks subject matter jurisdiction because Plaintiffs failed to seek judicial review within the sixty-day period prescribed by 19 U.S.C. § 2395(a) (1999)[5] and 28 U.S.C. § 2636(d). The time period required for challenging a determination of ineligibility before this court under 28 U.S.C. § 1581(d)(1) (1994)[6] is governed by 28 U.S.C. § 2636(d). *See Former Employees of ITT v. Sec'y of Labor*, 12 CIT 823, 824 (1988).

Plaintiffs' claim that because government officials misrepresented to Ms. Miller that the DOL website was the official source for the status of plaintiffs' petition and that a letter would be sent to her from the DOL, the court should deem the plaintiffs' action timely commenced under the doctrine of equitable tolling.

IV.

ANALYSIS

The United States is immune from suit except as it consents to be sued. *United States v. Mitchell*, 445 U.S. 535, 538, 100 S.Ct. 1349, 63 L.Ed. 607 (1980); *United States v. Sherwood*, 312 U.S. 584, 586, 61 S.Ct. 767, 312 U.S. 584 (1941). However, under 28 U.S.C. § 2636(d), private parties are granted the right to contest the DOL's determinations of worker eligibility for NAFTA TAA. The sixty-day period prescribed by 19 U.S.C. § 2395(a), and pursuant to 29 C.F.R. § 90.19(a)(2002),[7] begins to run when the negative determination is published in the Federal Register. In this case, the Determination was published on May 17, 2002, and while Ms. Miller's letter was sent on July 16, 2002, it was not deemed filed until July 22, 2002, sixty-six days after publication in the Federal Register.

The Supreme Court has held that statutes of limitations, in suits against the government, are presumptively subject to equitable tolling. *See Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96, 111 S. Ct. 453,

[5] Section 2395 provides that "a worker * * * aggrieved by a final determination of the Secretary of Labor * * * may, within sixty days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination."

[6] Section 1581(d)(1) states that the Court of International Trade has "exclusive jurisdiction of any civil action commenced to review * * * [a] final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 * * * with respect to the eligibility of workers for adjustment assistance under such Act."

[7] Section 90.19(a) states that "any worker * * * aggrieved by a final determination * * * may commence a civil action for review of such determination with the United States Court of International Trade * * * within sixty (60) days after the notice of determination has been published in the Federal Register."

112 L. Ed. 2d 435 (1990). The doctrine of equitable tolling permits a plaintiff to avoid the bar of a statute of limitations should, despite all due diligence and reasonable efforts, she be unable to obtain information necessary to maintain her claim. *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990). However, a mere "[m]istake, misunderstanding, or lack of knowledge is not sufficient grounds for tolling the statute of limitations" on a party's behalf. *Bergstein v. Jordache Enters.*, 1995 U.S. Dist. LEXIS 10718 *9 (S.D.N.Y. Aug. 1, 1995). Indeed, a statute of limitations may not be justifiably tolled if the plaintiff is merely unaware of facts or law. *See Laundry Equip. Sales Corp. v. Borg-Warner Corp.*, 334 F.2d 788, 792 (7th Cir. 1964).

Equitable tolling will apply when plaintiffs remained ignorant of necessary information or requirements through no fault of their own. *Dodds v. Cigna Sec. Inc.*, 12 F.3d 346, 350 (2d Cir. 1993). The Supreme Court in *Irwin* stated that equitable tolling was generally allowed where a complainant was "induced" by his adversary's misconduct into allowing the filing deadline to pass. 498 U.S. at 95–96. However, equitable tolling does not depend on the defendant's wrongful conduct; it focuses on whether there was an "excusable delay by the plaintiff" in bringing a claim. *Santa Maria v. Bell*, 202 F.3d 1170, 1178 (9th Cir. 2000).

This court held in *Former Employees of Siemens Info. Communication Networks, Inc. v. Herman*, 120 F. Supp. 2d 1107, 1113–14 (CIT 2000), that the doctrine of equitable tolling is available in NAFTA TAA cases because "the remedial purpose of the trade adjustment assistance program * * * supports the conclusion that equitable tolling is available" in an action challenging a final determination of the Secretary of Labor regarding worker eligibility for TAA. *Id.* The court in Siemens ultimately held that equitable tolling was not available to the plaintiffs in that case because they failed to act with due diligence in pursuing their claim.[8] *Id.* In determining whether plaintiffs acted with due diligence, the court required "a fact-specific inquiry," and stated that it would be "guided by reference to the hypothetical reasonable person." *Id.*

The Uncontroverted Facts in this Case Demonstrate that Plaintiff Acted as a Reasonably Prudent Person in Relying on the Assertions of Government Officials and Filing Her Claim Challenging Labor's Negative Determination.

The question before this court then, is whether Ms. Miller acted with due diligence. The facts speak for themselves. Ms. Miller continuously

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[8] The court cannot entertain requests for judicial review of negative determinations beyond the statute of limitations if plaintiffs fail to either claim equitable considerations or exercise due diligence in bringing their claim. In *Former Employees of ITT v. Sec'y of Labor*, 12 CIT 823 (1988), plaintiffs did not plead equitable tolling and the court held that it lacked jurisdiction because plaintiffs filed their complaint more than five months after publication by the Secretary of Labor. *See also Former Employees of Geosearch, Inc. v. United States*, 11 CIT 953, 954 (1987). In *Kelley v. Sec'y of Labor*, 812 F.2d 1378 (Fed. Cir. 1987), plaintiffs failed to timely file their complaint with the Clerk of Court after receiving actual notice of the negative determination and the Federal Circuit held that the CIT could not take a liberal view of jurisdictional requirements and permit different rules for pro se litigants. *See id.* at 1380; *But see Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89 (explaining that equitable tolling is available against the government where claimant has either actively pursued judicial remedies or is induced to allow filing deadline to pass). *See also Former Employees of Roeder Hydraulics v. Sec'y. of Labor*, 19 CIT 825 (1995) (holding the court lacked subject matter jurisdiction because plaintiffs filed their action sixty days after Labor's final determination, and failed to respond to defendant's motion to dismiss).

e-mailed the DOL regional office in Harrisburg, Pennsylvania. She was told by a government official that the DOL website would contain the information she needed regarding the petition, and she checked the website daily. She visited the State of Pennsylvania Department of Labor Trade Adjustment Representative. She was told that the DOL would send a letter to Quality requesting the names, addresses, and social security numbers of persons laid off in the previous two years and send notifications regarding the determination. She read the pamphlets given to her by the representative. She called the DOL NAFTA TAA office in Washington D.C. She contacted her federal Representatives. She contacted her state representative. She was affirmatively instructed by government officials to check the DOL website.[9] At no time did the various government officials she spoke with or e-mailed tell her that she was not consulting the correct source of information.[10]

Ms. Miller relied on assurances and instructions from the State of Pennsylvania Department of Labor Trade Adjustment Representative and the DOL egional office that she was checking the correct source for information about the petition. The government officials' affirmative representation, that the correct method by which she should check for notice regarding a determination was the DOL website, caused Ms. Miller to follow her course of action. Ms. Miller's understanding of the process was further confirmed by the Trade Adjustment Representative personally checking the DOL website in her presence in order to determine whether a notice of the determination had been issued. Where a "reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs." *Santa Maria*, 202 F.3d at 1178. The actions of these officials reasonably led Ms. Miller to believe that she was acting appropriately checking the DOL website for a determination while awaiting a letter from the DOL.

Federal courts extend equitable relief sparingly, and the DOL relies on authority that holds tolling is generally only available where a party "has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Irwin*, 498 U.S. at 96 (footnote omitted). During oral argument, Defendant claimed that Ms. Miller was barred from asserting equitable tolling because she was not tricked or induced by the government. While the record demonstrates no intentional trickery by the gov-

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[9] The very first day the notice appeared on the DOL website she took action.

[10] Decisions by other courts support the proposition that where a plaintiff is induced by government officials to allow a filing deadline to pass, the court is warranted in granting equitable relief. In *Jarrell v. United States Postal Serv.*, 753 F.2d 1088 (D.C. Cir. 1985), the court excused plaintiff's non-compliance with filing requirements because it resulted from justifiable reliance on the advice of a government officer. *Id.* at 1092. Additionally, in *Early v. Bankers Life & Casulaty Co.*, 959 F.2d 75 (7th Cir. 1992), the court found that an EEOC employee's "erroneous representation" to plaintiff that filling out a questionnaire fulfilled the necessary administrative level requirements and assurance that he had two years from the date of the alleged act of age discrimination to file a claim was sufficient to toll the administrative statute of limitations. *Id.* at 81.

ernment, it certainly shows inducement. Ms. Miller was told what to do and how to do it. The affirmative instructions she was given were incorrect. If the DOL and its governmental representatives cannot reasonably be expected to know their own rules and procedures, who can? If a working person, untrained in the law and administrative procedures, cannot rely on an affirmative statement by the government of the United States, upon whom can they rely?

Defendant further claims that merely because Ms. Miller availed herself of the DOL website, a more user-friendly source than the bound Federal Register, such action did not entitle her to rely on the DOL website rather than the Federal Register. Defendant misstates the case. Ms. Miller did not rely on the website; rather, she relied on the assertions made by government officials that she should check the website for the determination.

Defendant also claims that Ms. Miller ignored the instructions in one of the pamphlets the State of Pennsylvania Department of Labor Trade Adjustment Representative gave to her, and that the pamphlet's instructions gave her actual and constructive notice to check the Federal Register. The pamphlet, "Assistance for Workers Under the Trade Act of 1974" mentions the Federal Register in a section titled "Appeal Rights." The language that Defendant cites, on the eighteenth page of the pamphlet, states that "workers whose petition for adjustment assistance has been denied by the U.S. Department of Labor may: * * * [f]ile an appeal seeking judicial review of the U.S. Department of Labor's notice of final negative determination within 60 days of publication of the denial in the Federal Register." Plaintiffs sought the results of their TAA determination and had no reason to further inquire as to their appeal rights until the DOL made a determination. Additionally, Defendant fails to mention that the same pamphlet states on the second page that

> A petition for TAA benefits may have already been filed for workers in your company. You may verify whether a petition has been filed, and the status of the petition, by checking with the local Job Center, Team Pennsylvania CareerLink, UC Service Center, by contacting the Office of the Trade Adjustment Assistance, or by visiting the U.S. Department of Labor's website at http://www.doleta.wdsc.org/trade_act/determinations.asp.

Thus, the pamphlet instructs workers to check the status of their petition through the CareerLink office or to use the internet to go to the DOL website, both of which Ms. Miller did.

As a general rule, publication in the Federal Register is deemed sufficient notice of a determination for the purpose of triggering the sixty day period. *See* 29 C.F.R. § 90.19(a); *Former Employees of Malapai Res.*, 15 CIT 25, 27 (1991). However, equity requires that the court weigh the facts in a tolling case. *See Volk v. Multi-Media, Inc.*, 516 F. Supp. 157, 161–62 (S.D. Oh. 1981). The pamphlet does not state that the Federal Register, rather than the DOL website, is the official source for checking the status of a petition. For the court to permit the Defendant to claim

that Ms. Miller had constructive knowledge through one pamphlet that instructs a worker to check the DOL website, a course of action consistent with and supported by what she has told by other government officials, would be manifestly unfair.

Finally, the Defendant's oral reply[11] failed to raise persuasive countervailing factors, reasoning, or prejudice that it would suffer should the Court toll the statute in Plaintiffs' favor. A reasonably prudent person should be able to rely on the assurances and instructions of government officials in their field of expertise. When it instructs a party on a course of action the government can hardly claim that a party should know better than to follow its advice. Weighing the government's affirmative instructions against Ms. Miller's actions, the Defendant's arguments against tolling, must fail. Ms. Miller took great care in attempting to preserve her rights and meet the requirements as explained to her by government officials. It would be categorically unreasonable, given Ms. Miller's heroic diligence and persistence, to hold that she should not rely on the assurances and affirmative representations of government officials.

V.

CONCLUSION

The Court of International Trade is a court of equity, 28 U.S.C. §1585 (1999), and it will do equity here. The DOL should blush to have raised this argument against the working people whose interests it supposedly represents. It is this sort of bureaucratic finger-pointing and blame avoidance which caused Ronald Reagan to say, "The nine most terrifying words in the English language are 'I'm from the government and I'm here to help.'"[12] The principles of equity will not permit such conduct. The Defendant's Motion is DENIED.

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[11] The court permitted the Defendant to orally reply to Plaintiff's Opposition to Defendant's Motion to Dismiss because Defendant's Reply brief was not filed within time and Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss had not yet reached the court, via mail, by the time set for oral argument.

[12] Speech in Chicago (Aug. 12, 1986).

(Slip Op. 03–28)

CARPENTER TECHNOLOGY CORP, PLAINTIFF *v.*
UNITED STATES, DEFENDANT

VIRAJ IMPOEXPO LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Consolidated Court No. 00–09–00447

[Antidumping duty remand determination sustained.]

(Decided March 18, 2003)

Collier Shannon Scott, PLLC, (Robin H. Gilbert), Washington, D.C., for the plaintiff Carpenter Technology Corporation.

Miller & Chevalier (Peter Koenig), Washington, D.C., for the plaintiff Viraj Impoexpo Ltd.

Robert D. McCallum, Jr., Assistant Attorney General, *David M. Cohen, Director, Lucius B. Lau,* Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice *(Elizabeth G. Candler),* for defendant The United States; (of counsel: *William G. Isasi,* Attorney, U.S. Department of Commerce).

OPINION

MUSGRAVE, *Judge:* This opinion presumes familiarity with *Carpenter Technology Corp. v. United States*, Slip Op. 02–77 (July 30, 2002). Previously, the Court found that "banding" to account for the absence of complete variable cost of manufacturing ("VCOM") information was not unlawful *per se* for the purpose of matching U.S. and foreign market sales, however the matter was remanded for clarification of the statement that banding had been undertaken "in order to obtain more identical matches." Commerce was also requested to clarify and, as necessary, reconcile Carpenter's allegation that it had applied different standards to Viraj Impoexpo Ltd. ("Viraj") and Panchmahal Steel Ltd. ("Panchmahal"). *See* Slip Op. 02–77 at 17–18.

Remand has resulted in *de minimis* antidumping duties. For U.S. sales that did not have an identical foreign market match due to incomplete VCOM information, Commerce determined that the weighted average of the dumping margin calculated for matched sales is "a reasonable approximation of dumping attributable to Viraj's unmatched sales because it is based on Viraj's own sales data and the Department has found no facts on the record to suggest that such a use would be distortive[and] * * * it is consistent with Department practice." *Remand Results* at 4, referencing *Porcelain-on-steel Cooking Ware from Mexico: Final Results of Antidumping Duty Administrative Review,* 58 Fed. Reg. 43327, 43329 (Aug. 16, 1993). Regarding resort to "banding" to compensate for the incomplete VCOM information, Commerce explains that

> the facts of the record support the conclusion that *banding* is a reasonable alternative to the difference in merchandise analysis. Specifically, Viraj's direct materials costs evidence cost differences between two size ranges. Commerce used *banding* according to

> these two size ranges in the absence of [complete] VCOM data. Therefore, where VCOM data was not available due to confusion over reporting requirements, rather than lack of cooperation, the use of *banding* as non-adverse facts otherwise available for Viraj was reasonable.
>
> In addition, Commerce reviewed the record with respect to the "disparate" treatment between Viraj and Panchmahal. Based on this review, Commerce concluded that such "disparity" is attributable to Panchmahal's failure to cooperate (*i.e.*, Panchmahal's refusal to provide information in the manner in which it was requested by the Department).[] Furthermore, the Department noted that Panchmahal never reported cost data that took size into account for its comparison market, thus precluding the Department from banding its sales or deriving any information to make differences in merchandise adjustments to normal value. Unlike Panchmahal, and as affirmed by this Court, Viraj was a cooperative respondent.
>
> * * * * * * *
>
> * * * [W]hile the deficiencies [in Viraj's and Panchmahal's responses] may relate to similar cost information, the Department determined that the reasons for the deficiencies were different. ([*I*].*e.*, Viraj was confused as to the reporting requirements while Panchmahal simply refused to report the requested data. *See Final Results* at 4–7, 11–13.) The Act clearly authorizes the Department to treat respondents differently based on their level of cooperation. *See* 19 U.S.C. 1677e(b). As such, the "disparate" treatment of Viraj and Panchmahal does not violate the statute.

Remand Determination at 3, 4–5 (internal citations omitted; highlighting in original).

The government argues the remand results should be sustained in their entirety. Viraj has provided no comment. Carpenter Technology Corporation ("Carpenter") argues for a different model-matching methodology and for a different margin to assign to unmatched sales as facts otherwise available. Specifically, Carpenter again takes issue with the fact that Commerce reached different results with respect to Panchmahal and Viraj. It argues that on remand the correct interpretation of the remand order was for Commerce to

> address in a substantive manner any difference in the respondents' data submissions that supports use of different methodologies as to the two respondents. To simply state that the different methodologies are appropriate because Panchmahal failed to cooperate in not providing cost information to enable accurate product matching, when Commerce itself recognizes that Viraj also did not provide cost information to enable size-specific product matching, is a distinction without any meaning here. Because the two respondents both failed to provide the requested data to Commerce that would have enabled the agency to make size-specific product matches, Commerce has no reasonable basis for penalizing Panchmahal for this failure and treating Viraj much more favorably.
>
> In its decision to apply an adverse facts available rate to Panchmahal, the Department highlighted the significance of the size vari-

> able, noting that Panchmahal's "exclusion of the size characteristic in its reported control numbers" was contrary to the instructions expressed in the original questionnaire, and that it was a "necessity" to report costs on a size basis. *Decision Memorandum*, at 6. Yet, despite the similar admission that Viraj's costs were reported "irrespective of size altogether" (and, therefore, unusable), Commerce treated Viraj much more favorably by applying a "banding" methodology and by using non-adverse facts available.
>
> Given this, the only way to correctly respond to the Court's remand instructions was for Commerce to acknowledge that the similar failings of both companies should have similar consequences. As the Court has said, "[i]t was incumbent upon Commerce to apply its rationale to all respondents similarly situated."

Def.-Int.'s Comments at 3–4. Carpenter complains that Commerce did not follow its policy of calculating costs consistent with model matching criteria developed at the outset of an investigation or review[1] with respect to Viraj although it applied that policy with respect to Panchmahal. Carpenter argues that banding is not a "neutral" use of facts otherwise available because Commerce here "made product comparisons without size-specific data by creating bands of merchandise so broad that a certain amount of sales were thus destined to be 'comparable' to each other[,] * * * a 'gift' to Viraj, while Panchmahal was penalized for a similar deficiency in its data." *Id.* at 4–5.

Commerce has correctly interpreted the order of remand. In its initial briefs, Carpenter challenged Commerce's determination on Viraj's cooperativeness by arguing *inter alia* that deeming Viraj cooperative and Panchmahal uncooperative could not be reconciled. Viraj's cooperation could be sustained on the basis of independent record evidence. Panchmahal is not a party to this proceeding, but the treatment of its circumstances also appeared relevant to Carpenter's allegation of a results-oriented determination. Rather than undertake *arguendo* examination of the respective requests for data and responses from those respondents, the Court considered it appropriate to remand the issue to Commerce for clarification and, as necessary, reconciliation. The remand results adequately explain Commerce's reasoning for its treatment of Viraj as distinct from Panchmahal for purposes of this proceeding.[2]

Carpenter also continues to insist that "[b]anding for either party has the effect of *obviating*, rather than correcting, differences in product characteristics and the attendant matching problems caused by missing cost data." *Id.* at 5. Carpenter alleges that through banding "a *double* benefit was conferred, as the product matches that were so dissimilar that they required constructed value even after the products were rede-

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[1] Def.-Int's Comments at 4, referencing *Antidumping Duties; Countervailing Duties; Proposed Rule*, 61 Fed. Reg. 7308, 7339 (Feb. 27, 1996) ("The Department's practice is to calculate costs consistent with model matching criteria it develops [at the] outset of an investigation or review. The product categories developed in such fashion generally account for significant differences in actual costs affecting price. The Department intends to continue this practice because it prevents any manipulation of the cost analysis through changes in internal product classifications.").

[2] Indeed, Carpenter's argument could also be construed as advocacy for similar treatment of Panchmahal.

fined by two universal 'bands' produced a margin that was based on already artificially constructed 'identical matches.'" *Id.* (italics in original).

Carpenter's other arguments essentially restate arguments the Court rejected in ruling on the initial motions for judgment on the agency record, *see* Slip Op. 02–77 at 16–17, and these arguments are no more persuasive at this time. As noted in the prior opinion, differences in merchandise must generally exceed 20 percent before merchandise is presumed not comparable. Carpenter's double benefit theory, one of compounding, does not demonstrate, as a matter of fact, that banding produced distorted results, that products within each band are so dissimilar in size from their counterpart as to be incomparable, or that Commerce could not have been other than "satisfied" that a size difmer adjustment was absolutely necessary. Commerce may depart from policy if it provides a reasonable explanation for doing so, *e.g.*, *Industria de Fundicao Tupy v. United States*, 20 CIT 875, 876, 936 F.Supp 1009, 1015 (1996), and it has done so here.

Carpenter lastly complains that it was unclear why the Court observed that the 3.87 percent non-adverse less-than-fair-value margin determined against Grand Foundry in 1994 appeared to be a "tenuous fit" to use for Viraj's unmatched sales. The Court's observation was based upon: (1) the age of that rate; (2) the apparent lack of connection between that respondent and the one at bar; (3) whether there is other evidence in the record that Commerce may reasonably conclude is more probative of Viraj's present circumstances than the older nonadverse LTVF rate (*e.g.*, the zero percent margin determined against Viraj in 1997); and (4) the Court's conclusion with respect to the government's argument in opposition thereto. The Court did not direct Commerce to use a particular rate, only that selected data have to evince a "rational relationship between data chosen and the matter to which they apply." Slip Op. 02–77 at 21 n.12, quoting *Manifattura Emmepi S.p.A. v. United States*, 16 CIT 619, 624, 799 F.Supp. 110, 115 (1992).

CONCLUSION

Commerce's remand results comply with the prior opinion and order and will be sustained.

(Slip Op. 03–29)

MITCHELL FOOD PRODUCTS, INC., FORMERLY SOUTHERN GOLD CITRUS PRODUCTS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 94–05–00296

[Upon remand from the Court of Appeals for the Federal Circuit, judgment for the defendant reaffirmed.]

(Dated March 19, 2003)

Donald F. Beach, Esq. for the plaintiff.

Robert M. McCallum, Jr., Assistant Attorney General; *David M. Cohen,* Director, and *Lucius B. Lau,* Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice *(Henry R. Felix)* for the defendant.

MEMORANDUM AND ORDER

AQUILINO, *Judge:* This court's slip opinion 01–43, 25 CIT ___ (April 12, 2001), familiarity with which is presumed, reported that the trial of plaintiff's complaint herein had left doubt, both as to standing to actually recover and with regard to the merits of the claim for recovery. Whereupon final judgment in favor of the defendant was entered, dismissing this action for return of drawback duties.

The plaintiff appealed to the U.S. Court of Appeals for the Federal Circuit, which determined in an opinion not issued for publication to vacate that judgment and remand the matter to "determine both whether Mitchell Food has standing and whether Mitchell Food is the real party in interest." No. 01–1412, 2002 U.S. App. LEXIS 15475, at *2 (Fed.Cir. July 30, 2002).

I

Comes now plaintiff's counsel, answering this question in the negative. That is,

> [t]hrough inadvertence, counsel had misnamed plaintiff as Mitchell Food Products, Inc. With the summons, a C.I.T. Form 13 was filed as required, indicating Mitchell Food was a wholly owned subsidiary of Packaged Food and Beverage Co. Inc., (PFB) incorporated under the laws of Delaware. PFB in turn was a wholly owned subsidiary of Philip Morris, Inc.
>
> SG [Southern Gold Citrus Products, Inc.] had already ceased operations when its corporate name was changed, and had been kept *in esse* solely to remain viable to proceed against Customs and remain viable to the conclusion of the litigation. The inadvertent misnaming resulted from a misunderstanding with the now retired CEO and Chief Counsel of PFB. Counsel concluded SG's name had been changed to Mitchell *Food,* as opposed to Mitchell *Citrus,* as he was first informed. * * *
>
> As soon as the opinion of the CAFC was issued, counsel made inquiries to Philip Morris Corporation and deduced that Mitchell Citrus Products, Inc. was in fact a Florida Corporation. The original

> notice to Customs, made part of the complaint, had been correct, i.e. Mitchell *Citrus*.

Memorandum of Law in Support of Plaintiff's [] Remand Motion, pp. 2–3 (underscoring in original). Counsel's affidavit, plaintiff's exhibit A, and the accompanying certification of the Florida Department of State, plaintiff's exhibit C, lend support to this representation. Whereupon plaintiff's motion prays that its summons and complaint be amended to reflect and confirm that Mitchell Citrus Products, Inc., as successor to Southern Gold Citrus Products, Inc., is the real party in interest and has standing to prosecute this action. The motion represents, among other things, that "no omissions of entries on the protests filed by the wronged corporate party"[1] are involved, that the "plaintiff does not wish to assert a different ground for recovery"[2] and that "correction of plaintiff's name in this case will require no new discovery, no new trial, and no inordinate delay."[3]

Given these conditions, and claiming to have reviewed plaintiff's lengthy submission, the defendant has responded that it does not object to plaintiff's proposed amendment to its pleadings. That is,

> we are satisfied with plaintiff's showing that Mitchell Citrus is the legal successor to Southern Gold and is the real party in interest with standing to prosecute this suit.

Defendant's Response to Plaintiff's Motion to Amend its Pleading and Summons, p. 1 (March 17, 2003).

II

The court concurs in this assessment. Plaintiff's Motion to Amend its Pleading and Summons by Substitution of its Correct Name, Mitchell Citrus Products, Inc., and To Have This Court Find the Latter Named Corporation Is Successor to Southern Gold Citrus Products, Inc. and Is Thereby the Real Party in Interest With Standing to Sue therefore can be, and it hereby is, granted. There being, however, no other relief requested or required under the circumstances, this court's judgment dated April 12, 2001 and entered pursuant to slip opinion 01–43, 25 CIT ____ (April 12, 2001), must be, and it hereby is, reaffirmed.

So ordered.

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[1] Memorandum of Law in Support of Plaintiff's [] Remand Motion, p. 23.

[2] *Id.* at 11.

[3] *Id.* at 18.

NOTICE

CASE MANAGEMENT/ELECTRONIC CASE FILES (CM/ECF) TRAINING

The U.S. Court of International Trade has scheduled training classes in Washington, D.C. on its new Case Management/Electronic Case Files (CM/ECF) System. The classes will review the query-only portion of the Case Management System. The classes will be held on the following dates and times.

Date	Time
Wednesday, April 2, 2003	10:00 a.m. – 12:00 p.m.
Wednesday, April 2, 2003	2:00 p.m. – 4:00 p.m.
Thursday, April 3, 2003	10:00 a.m. – 12:00 p.m.
Tuesday, April 8, 2003	10:00 a.m. – 12:00 p.m.
Tuesday, April 8, 2003	2:00 p.m. – 4:00 p.m.
Wednesday, April 9, 2003	10:00 a.m. – 12:00 p.m.

Seats are limited, so if you are interested in attending the training, please send an e-mail to request to attend one of the classes to *cmecf_training@cit.uscourts.gov*. You will receive confirmation of your attendance, along with notification of the location of the training, after you register for one of the classes.

This course has been approved in accordance with the requirements of the New York State Continuing Legal Education Board for a maximum of 1.0 credit hours, which can be applied toward the Law Practice Management requirement.

Dated: March 18, 2003.

LEO M. GORDON,
Clerk of the Court.

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